



**Comploj Vieider Lorenzon
Lechner Zanellato**

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Equity partner

Dott. Lodovico Comploj
Dott. Josef Vieider
Dott. Emilio Lorenzon
Dott. Alessandro Zanellato
Dott. Martin Lechner
Dott. Stefan Lanznaster

Partner

Dott. Nicola Sartori
Dott. Thomas Pichler
Dott. Samuel Vittur

**Wirtschaftsprüfer und
Steuerberater / Dottori commercialisti**

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Dott. Roberto Convento

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Antonio Gocev

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Clients

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**Rulings of the Court of Cassation on the INPS schemes for craft businesses and traders in
the case of shareholders of limited liability companies – no INPS contributions on
undistributed profits**

In September 2026, in a number of rulings to the same effect (including No. 25377 of 16 September 2026), the Court of Cassation substantially changed the practice hitherto followed by INPS in calculating contributions for working shareholders of limited liability companies (S.r.l.). Until now, NISF/INPS – in line with its administrative practice and the instructions for form RR – attributed to the shareholder, in principle, the share of the company's taxable income corresponding to his or her shareholding, irrespective of whether the profit was actually distributed or retained by the company.

The Court of Cassation, by contrast, relies on the wording of Article 3-bis of Law Decree No. 384/1992: for the purpose of assessing contributions, what is relevant is the business income attributed to the insured person for tax purposes. Under the new case law, attribution for contribution purposes in the case of a limited liability company presupposes that the income is attributed to the shareholder for tax purposes. The Court of Cassation identifies for this purpose in particular the receipt of the profits or the option for tax transparency pursuant to Articles 115

and 116 of the Italian Income Tax Code (TUIR) (from 2027, Articles 124 and 125 of Legislative Decree No. 117/2026).

If, on the other hand, the profits of a limited liability company subject to ordinary taxation are retained or allocated to reserves, they remain with the company for tax purposes and, under the new case law, are not to be included in the contribution base of the shareholder. Provided that there is no other business income subject to contributions, all that remains in such a case is the contribution burden on the statutory minimum income.

This also applies to the sole shareholder and sole director who decides on the retention of profits himself or herself: there may be many business reasons for not distributing profits, and this alone does not constitute circumvention. And: the burden of proving the attribution of the profits lies with NISF/INPS.

Example:

A limited liability company generates taxable profits of EUR 300,000, which are allocated in full to a reserve. A shareholder holding a 50% interest works in the company as his or her main occupation and is registered with the traders' scheme (Gestione commercianti). Until now, INPS attributed EUR 150,000 to him or her as the contribution base; under the new case law this amount is not subject to contributions and the shareholder owes, provided that there is no other business income subject to contributions, only the minimum contributions. In the case of limited liability companies with tax transparency, by contrast, the income is attributed directly to the shareholders and remains subject to contributions.

The treatment of distributed profits remains open. The Court of Cassation continues to describe the contribution base as the share of the taxable income of the limited liability company, but makes its attribution to the shareholder dependent on the receipt of the profits or on tax transparency. It therefore remains unclear whether what is relevant is the proportionate taxable income of the company (before IRES and including the tax add-backs for non-deductible costs) or the net dividend distributed – all the more so because dividends are subject to the final withholding tax of 26% and are not reported in the IRPEF return. Moreover, taxable income and distributed profit are sometimes entirely different figures: the distribution is made, by resolution of the shareholders, out of the profit for the year or out of reserves (including those of earlier years), and the amount distributed is net of taxes. Assessment on the basis of the net profit would also put at a disadvantage limited liability companies with tax transparency (and partnerships), whose shareholders continue to have to calculate contributions on the taxable income, which is

as a rule considerably higher. The treatment of permanent tax differences is also unresolved: non-deductible costs increase taxable income but can never be distributed; conversely, tax-exempt income or special deductions (e.g. hyper-depreciation) can be distributed even though they are not taxed. Allocating these differences to reserves distributed in later years would require monitoring over many years and would scarcely be feasible in practice.

Initial comments in the specialist press infer from the rulings that, for the purposes of attribution, what could in principle be decisive is the actual receipt of the profit, and that the concept of ‘income declared’ may be understood in a broader sense as income subject to tax. This is supported by the fact that some rulings (e.g. No. 25383/2026 and No. 25628/2026) concern shareholdings whose profit distributions would have been subject to the final withholding tax. **On this interpretation** it should therefore not be decisive whether the dividend is reported in the tax return or is subject to the final withholding tax.

In our view, the principles set out above apply equally to the scheme for craft businesses (Gestione artigiani).

A separate question, however, is **whether there is an obligation to register with the craft businesses’ scheme at all**. In ruling No. 19448 of 12 June 2026 the Court of Cassation confirmed its settled case law: registration of the company in the Register of Craft Businesses (Albo delle imprese artigiane) is not constitutive of the obligation to pay contributions; the absence of such registration is irrelevant once the craft nature of the activity has been established. For the purposes of social security classification, what matters in particular is whether the craft activity is carried out predominantly through personal work, including manual work, in the production process and whether the labour factor predominates over the capital factor. In the case decided, the limited liability company was classified by INPS in the industry sector; the registration of the shareholder and director by the authorities of their own motion was nevertheless confirmed.

A distinction must be drawn for South Tyrol: The South Tyrolean Crafts Act lays down special requirements for limited liability companies as regards the shareholders or members of the administrative body who work in the business and as regards their shareholdings. If those requirements are not met, then under the South Tyrolean Crafts Act it is not merely a case of a missing formal registration; rather, the very requirements which provincial law lays down for a limited liability company to qualify as a craft business are absent. Whether NISF/INPS may nevertheless make individual shareholders subject to the craft businesses’ scheme on the basis

of the national social security rules was, in our view, not conclusively decided by Court of Cassation ruling No. 19448/2026.

In general, however, two cases must be distinguished in the case of South Tyrolean craft limited liability companies:

The requirements for a craft business are met in substance, but the company is not registered in the Register of Craft Businesses: According to settled case law, the mere absence of registration does not in principle protect against a possible obligation to pay contributions to the craft businesses' scheme.

The limited liability company does not even meet the substantive requirements of the South Tyrolean Crafts Act: In this case, in our view, substantial arguments continue to exist against classifying the shareholders in the craft businesses' scheme.

Practical notes:

In the light of this case law, shareholders of a limited liability company who are currently registered with the traders' or the craft businesses' scheme should have the following examined:

- whether in past years INPS contributions were paid on undistributed profits of the limited liability company;
- whether those contributions were in fact owed under the new case law;
- whether a correction or a refund claim is possible;
- and, in addition, in the case of shareholders of South Tyrolean craft limited liability companies, whether the requirements for registration with the craft businesses' scheme are met at all;
- whether the new case law should already be applied to contribution years that have not yet been definitively assessed or that still have to be declared.
- Finally, in the light of these rulings, the structuring of directors' remuneration and of profit distributions in limited liability companies will have to be reviewed.

It should be added that NISF/INPS has not yet officially adapted its previous administrative practice to the new case law. Applying the new principles already when calculating current contributions, or claiming a refund of contributions already paid, may therefore at present still give rise to objections and, where applicable, to litigation.

Kind regards

Josef Viejder



