

CLIENT ALERT

CORPORATE LIABILITY: THE ITALIAN SUPREME COURT EXTENDS THE SCOPE OF APPLICATION OF LEGISLATIVE DECREE N. 231/2001

The Italian Supreme Court has reconsidered the possibility of applying Legislative Decree No. 231/2001 (the “Decree”) not only to the offence of conspiracy, but also to the **so-called target offences of a criminal organisation** taking a different stance from the one it took in the famous ILVA Case.

THE ILVA PRECEDENT

In the **Ilva Case** (see *DLA Piper alert dated 7 March 2014, available at http://files2.dlapiper.com/DLA_Piper_Web_Images/WCCclientalertENG.pdf*), the Supreme Court had quashed the seizure order issued against the involved companies on the ground that the order had been adopted on the basis of offences not contemplated in the Decree. The Court thus **prohibited to use, in a specious manner, the challenge of the target offences of conspiracy**, reasserting the need to comply with the principle of peremptoriness to ensure actual effectiveness of the compliance programs in terms of prevention.

THE NEW STANCE TAKEN BY THE SUPREME COURT

Decision n. 28960/14 dated 3 July 2014, demonstrates that the Court has altered its position, **deeming it possible to apply the Decree to tax offences if such offences are included in the arrangements made by the criminal organisation** (in this case, a transnational organisation). On such assumption, the Court has declared that **the seizure order, issued on the assets of a company the top management of which was charged of transnational conspiracy concocted in order to evade taxes, is fully lawful**.

The Supreme Court has rejected the arguments brought forward by the company, which claimed that it was impossible to seize corporate assets because tax offences are not comprised in the catalogue of material offences provided for by the Decree.

The Supreme Court judges stated that *“in response to the specific ground of the appeal lodged against the unlawfulness of the seizure aimed at confiscation and related to tax fraud offences not included in the list of criminal offences recalled by art. 24 et seq. of Legislative Decree n. 231/2001, we must point out that such ground proves to be insignificant in the light of the challenge of transnational conspiracy: as already stated in fact in the relevant count, since tax offences are part of the arrangements made by the transnational criminal organization, such organization has made it possible or in any case easier the commitment of the tax offences perpetrated in Italy. It follows that, since the instance challenged to the individuals under investigation falls under the hypothesis contemplated in Law n. 146 dated 2006, art. 3, paragraph I, letter c), the seizure, aimed at the confiscation of an equivalent value pursuant to art.11 of the same law, including the proceeds of crime derived from the tax fraud offences (see, Section 3, 24.2/24.3.2011, Rossetti, RV, 249760) is fully lawful, a seizure order made against each of the aforesaid individuals for a value corresponding to the entire amount of the products, proceeds or price of crime even if the amount of the confiscation order can in the end not exceed, in the aggregate, the amount of the proceeds (Section 2, 9.1/4.2.2014, Clerici, Rv. 2583422)”*.

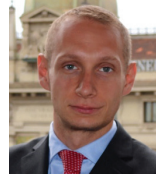
The above trend is extremely important as it implies the possibility that Article 416 of the Italian Criminal Code can be applied in such a way as to widen the scope of the

administrative liability of legal entities, and to include offences – tax offences, in this case – which would otherwise be excluded from such scope.

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