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Remarks Regarding the Activity of Taxpayers Declared Inactive and Subsequent Economical Consequences

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Abstract

Declaring a taxpayer as inactive is a procedure founded on expressly stipulated law conditions and it has both individual effects and effects on the relation established between an inactive taxpayer and an active one. The primary effect, which is the cause for all of the others, is the ex officio cancellation of the VAT registration. This marks the loss of the taxpayer's right to deduct the VAT using the "downstream VAT – upstream VAT" mechanism, becoming just a final consumer. The active taxpayer engaging in commercial transactions with an inactive taxpayer cannot deduct expenses, nor the VAT, as these operations are based on a document that is not issued in accordance with the legal provisions.

Keywords:

inactive taxpayer, reactivation, economical effects, VAT

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The tax legislation in Romania is constantly changing and tax law is probably the most dynamic branch of law, partly due to the legislator's perseverance in adapting the law to the social realities and to the taxpayers' requests. In the light of these facts, taxpayers declared inactive become particularly interesting, especially due to the effects this status attracts in practice.

The issue of declaring a taxpayer as inactive is not merely unilateral, but bilateral, since it regards the taxpayer himself on one hand and, on the other hand, the relations between the taxpayer and other economic entities. The analytical inquiry below is not by any means exhaustive, but aims at triggering a debate on the ramifications of this problem in practice and contributing to the literature on the topic.

The matter is governed by the Order of the President of the National Agency for Fiscal Administration (A.N.A.F. from hereon) no. 819/2008² for the approval of the procedure of declaring a taxpayer inactive, modified by the Order of the President of A.N.A.F. no. 2258/2010³. The regulation must be correlated with the Tax Code and the Tax Procedure Code, both of which regulate, by their own means, the status of the taxpayer declared inactive, the procedure to be followed for reactivation and the intricate issue of the transactions between an active taxpayer and an inactive taxpayer.

Firstly, following the structure of Order no. 819/2008, we will present the cases when a taxpayer is declared inactive. According to letter A, point 1 of Appendix no. 1 of Order no. 819/2008, a taxpayer who is a legal entity or any other entity without a legal status will be declared inactive if he simultaneously meets two conditions: the first - to not have submitted any declarations during a semester and the second - to not have been granted a derogatory regime by the competent authority. Depending on which unsubmitted declarations lead to inactivation, the same legislative act gives a limitative enumeration: Form 100 "Statement regarding payment obligations to the state budget",

2 Order no. 819/2008 of the President of the National Agency for Fiscal Administration, published in the Official Journal of Romania (Monitorul Oficial al României), part 1, no. 404 on May 29th 2008

3 Order no. 2258/2010 of the President of the National Agency for Fiscal Administration, published in the Official Journal of Romania, part 1, no. 552 on August 5th 2010

Form 102 “Statement regarding payment obligations to the social security budget and state funds”, Form 300 “Deduction of the value added tax”, Form 301 “Special deduction of the value added tax”, Form 390 VIES “Recapitulative statement regarding intra-Community deliveries/acquisitions”, form 394 „Informative declaration regarding deliveries/performances and acquisitions on national territory”.

As for the second condition, Order no. 1221/2009⁴, modified by the relatively recent Order no. 342/2013⁵, describes the procedure for approval of a derogatory submissions regime. Interestingly enough, among the statements that can follow derogatory submissions regime we identify only two of the forms listed above, namely 100 and 300.

As an exception, the taxpayers who find themselves in a state of insolvency or the ones for whom a dissolution decision has been rendered or passed, will not be declared inactive, even though the conditions for doing so are met. Also, the procedure in Order no. 819/2008 does not apply to individuals who independently carry out economic activities or practice liberal professions, nor to the taxpayers declared inactive according to the conditions for declaring a taxpayer inactive by tax auditors/control authorities of A.N.A.F. and its subordinate units.

Note that the Tax Procedure Code identifies in art. 78¹ two more cases in which a taxpayer is declared inactive. The first concerns taxpayers who avoid tax inspections by declaring fiscal residence identification information which does not allow the tax authority to locate it. The same regime is to be applied if the tax authority found that the taxpayer does not operate his activity at the declared fiscal residence. However, our study will limit itself to the hypothesis in Order no. 819/2008.

4 Order no. 1221/2009 of the President of the National Agency for Fiscal Administration, published in the Official Journal of Romania, part 1, no. 177 on June 17th 2009

5 Order no. 342/2013 of the President of the National Agency for Fiscal Administration, published in the Official Journal of Romania, part 1, no. 194 on April 5th 2013

Regarding the procedure to be followed by the tax authority when obtaining the inactive taxpayers' list, the local tax authorities⁶ and the central authority represented by A.N.A.F. “juggle” data in a procedure that will be briefly explain in the following paragraphs.

In an initial phase, on a monthly basis, the competent tax authority compiles a list of taxpayers who have not fulfilled their declarative obligations and notifies them to do so. Consequently, half-yearly, 15 days from when the taxpayers have been notified for the declaration deadlines on January 25th and July 25th, the competent tax authority elaborates the list of the taxpayers which meet the conditions for being declared inactive, eliminating the ones who submitted their statements following the notifications received. The next step is centralizing the lists at a national level with the purpose of elaborating the project for the order of the president of A.N.A.F for approving the list of inactive taxpayers and publishing the project on the website of A.N.A.F. to ensure decisional transparency. The publishing is an ultimatum for the taxpayers who have not fulfilled their declarative obligations because at most 5 days after the list is published, the competent tax authorities send to each taxpayer in their territorial administration a final notification regarding the imminence of being declared inactive and the conditions that need to be met in order to avoid this. 3 days from the expiring of the 30 days from the publishing of the project, the competent tax authorities send to A.N.A.F. the final list of the taxpayers which meet the conditions for being declared inactive. The lists are aggregated at a national level and the specialized departments of A.N.A.F. undergo the steps for approving the order. Declaring a taxpayer inactive is done once the order enters into force, 15 days after displaying the order at A.N.A.F's headquarters and publishing it on their website in the section Public Information – Information regarding economic operators.

The reverse mechanism, when a taxpayer wishes to reactivate his status, he must meet one of the two conditions stated by letter A, point 6 of Appendix no. 1 of the Order no. 819/2008: either it was approved, at

⁶ For the detailed nomenclature, see Order no. 1104 of the President of the National Agency for Fiscal Administration on August 1st 2013 for the approval of the regional organizational structure

request, for him to pass through the derogatory submissions regime, or he fulfilled all of his declarative obligations. However, in practice, these provisions must be corroborated with those in the Tax Procedure Code, which state three cumulative conditions for reactivation: 1. fulfilling all the declarative obligations prescribed by the law; 2. fulfilling all payment obligations; 3. the tax authorities have found that the taxpayer exercises his activities at the declared fiscal residence. On the first day of each month, the competent tax authority makes a list of the taxpayers who meet the terms for reactivation for a period covering the previous month. It is then sent to the national level where it undergoes the phases for approving the order of the president of A.N.A.F. for approving the list of the reactivated taxpayers, order which enters into force 15 days from the date of display at A.N.A.F.'s headquarters and on its website.

The primary effect of declaring a taxpayer inactive is, according to art. 4 of Order no. 819/2008, the *ex officio* cancellation of the VAT registration⁷. This occurs starting the first of the month following the entry into force of the order which declared the taxpayer inactive and attracts both individual consequences for the taxpayer and consequences on his relation with other taxpayers.

Regarding personal consequences, the cancellation of the registration withdraws all of the typical benefits that derive from being a VAT⁸ payer, the most impactful one being the loss of the right to deduct VAT. Technically, for every acquisition encumbered with VAT, the inactive taxpayer will bear the VAT as a regular final consumer, losing the benefit of the “downstream VAT – upstream VAT” deduction mechanism.

The consequences of inactivation are far more cumbersome when the inactive taxpayer engages in commercial transactions with active taxpayers. The moral sense of the participant to the juridical relation is seen as a virtue only within restricted and exclusive surroundings, and the deliberate declaration of certain values appears

⁷ For details, see Order no. 605/2008 of the President of the National Agency for Fiscal Administration regarding the approval of the procedure of cancelling *ex officio* the VAT registration for those who are listed as inactive taxpayers, published in the Official Journal of Romania, part 1, no. 301 on April 17th 2008

⁸ Value added tax

often as a sign of failure to adapt (Ignatescu, 2013:282). We have seen above what occurs when the inactive taxpayer is the beneficiary (i.e. the purchaser), but when this is not the case and the inactive taxpayer is the supplier, the beneficiary who acquires goods or services from the inactive taxpayer cannot deduct expenses, nor VAT, as art. 11, par. (1²) of the Tax Code shows us. Such expenses are not eligible for deduction on the basis of art. 21, par. (4), lit. r) of the Tax Code which expressly stipulates that an expense logged in the financial records of the tax payer is not deductible if founded on a document issued by an inactive taxpayer, whose certificate of fiscal registration had been suspended by the order of the president of A.N.A.F. Regarding the VAT, art. 146 of the Tax Code conditions the deduction with the existence of an invoice issued according to the provisions of art. 155 which, in par. (19), states the requirement of mentioning the VAT registration code, but the inactive taxpayer does not validly possess such a code.

About the VAT, it is important to note that the cancellation of the registration is made *ex officio*, but the reactivation does not implicitly lead to VAT re-registration, this only occurring at the express request of the taxpayer. (Pătroi & Cuciureanu, 2009:106)

All of the above seems to indicate that the mechanism of declaring a taxpayer inactive has a sanctioning function and a preventive one, both fulfilling a dual role. The sanctioning function affects both the taxpayers who do not fulfil their declarative obligations and are faced with the consequences of inactivation, and the active taxpayers who engage in commercial transactions with those declared inactive without showing diligence in verifying the status of their counterparty. Although the permanent checking of the inactive taxpayers' registry may seem difficult and capable of destabilizing economic relations, in reality the information is easily accessible on A.N.A.F.'s website and shows a prudent behaviour that an economic entity should possess. The preventive function is the outcome of the onerous effects of inactivation and, just like the sanctioning function, is bilateral, because any taxpayer, regardless on which side of the purchaser-supplier relation stands, wishes to avoid the situation in which he cannot deduct VAT.

Although there are cases in which a taxpayer willingly and knowingly does not fulfil their declarative obligations with the intent of obtaining the inactivation and the *ex officio* cancellation of the VAT

registration, this demarche is largely useless since the law permits, for the purposes of fiscal optimization⁹, to choose a special exemption regime for the so-called “small enterprises” which have an annual turnover, declared or accomplished, inferior to the limit of 65.000 euros.

Issues regarding the inactive taxpayers still occur when enforcing the law, mainly because of the condensed provisions, but we are certain that the conjugated efforts of the legislator, doctrine and jurisprudence will resolve the controversies around the procedure of declaring taxpayers inactive.

References

- Costea, I. M. (2011). *Optimizarea fiscală. Soluții. Limite. Jurisprudență.* (Fiscal optimization. Solutions. Limits. Jurisprudence.), București: C.H.Beck, pp. 218-227
- Ignătescu, C. (2013) Abuse of rights in trade agreements from the perspective of E.U. regulation, *European Research Development in Horizont 2020*, Ed. Lumen Media Publishing, Iasi, 2013, p. 281-292
- Pătroi, D. & Cuciureanu, F. (2009). *TVA intracomunitar. Frauda carusel. Rambursarea TVA.* (Intra-Community VAT. Carousel fraud. VAT reimbursement.). București: C.H.Beck, p. 106

⁹ For elaborations in the matter of the VAT fiscal optimization mechanism, see I. M. Costea, *Optimizarea fiscală. Soluții. Limite. Jurisprudență.* (Fiscal optimization. Solutions. Limits. Jurisprudence.), Editura C.H.Beck, București, 2011, pp. 218-227