

## **ACCOUNTING AND FISCAL REPORTS IN THE CASE OF THE ANNULMENT OF THE VAT CODE**

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### **Abstract**

*The private business environment contains economic relations between the entities that are subject to VAT and entities that are not subject to VAT. In this economic carousel, a specific case is that of the legal entities which are subject to VAT but have an annulled VAT code. From a fiscal point of view, the Romanian legal regulations are clear. Still, from an accounting point of view, there are no specific regulations. Our intention is to build a series of reasoning related to the accounting registration of such cases. Our recommendations focus on the legal entities intending to access European funds and have no experience in the business environment. Thus, we propose a careful verification of the documents of the suppliers. We also consider as an imperative necessity the interrogation to the fiscal authorities in order to find out the fiscal code for a potential business partner.*

**Key words:** VAT, accounting report, fiscal report, VAT code.

**Classification JEL:** M40, M41

### **1. Introduction**

The contemporary business vocabulary includes more and more expressions as Europeanisation, European directives, international standards of accounting report, etc. these notions can be correctly formulated only by knowing all the aspects specific to each country from accounting and fiscal perspectives.

The problems related to VAT needs to be solved and regulated under some aspects, as the annulment of the VAT code, on a national level.

The annulment of the VAT code can be made by the fiscal authorities for multiple reasons, such as the expiration of the registered office, the non-submission of the VAT returns for a period of six months, etc.

The business environment must be very familiar to the mechanism of the annulment of the VAT code and must consider its consequences on the economic relations.

The present paper intends to answer to a series of questions as: is it compulsory for an entity to buy goods and services from an economic agent having an annulled VAT code? Is it possible to use the VAT accounts to register the economic operations generated by the relations with the entities with an annulled VAT code?

The answers will be given starting from theoretical aspects, but the results will be based on a fiscal and accounting case study.

### **2. Research methodology**

For our paper, we used several methods and techniques, as follows:

- The method of table representation of useful information (e.g. the fiscal reports: form 300, form 394);
- The description of transactions or economic phenomena based on inductive reasoning;
- The individual interview. We interviewed a small number of managers of the legal entities that had economic relations with economic agents with an annulled VAT code. We also interviewed people from the fiscal framework;

- The analysis of the documents. We analysed a series of documents, such as: the confirmation of the company details emitted by the Registry of Commerce, form 394, form 300, the acquisition journal, and the sales journal;

- The method of the case study: from fiscal and accounting points of view, we analysed the operations in order to make them clear to the users of economic information.

We also studied a series of legal Romanian regulations, as the Fiscal Code, the Fiscal Procedure Code, and the Order 1802/2014. These legal provisions contain fiscal and partly accounting regulations on the annulment of the VAT code, and the impact on the legal entities from fiscal and accounting points of view.

### 3. Case study on the report in the case of the annulment of the VAT code

We present as follows the case of a legal entity with an annulled VAT code (the provider of a refrigerating appliance).

The company Student SRL (subject to income taxation and with 8 full-time employees) has an annulled VAT code (due to article 316, The registration of the subjects to VAT, which states to point 1 letter a [1]: The competent fiscal organs can annul the registration of a VAT code, on the base of the present article: if the entity is declared inactive according to the provisions of the Fiscal Procedure Code[2], from the **date of the inactivity declaration**) issues an advance invoice of 7,000 RON, with a VAT of 1,330 RON to SC Alfa SRL (an active entity, registered as VAT subject and using the monthly VAT system to collection). The registration cost in the accountancy of the supplier is 5,000 lei. SC Alfa SRL buys the refrigerating appliance to use in a production activity. This company is part of a financing agreement in the Start-up Nation program, for an amount of 200,000 RON.

A company can be verified on the web site [www.anaf.ro](http://www.anaf.ro) for finding out if it is an active or an inactive taxpayer.

A special attention must be given to this type of societies, because a commercial relation may have a detrimental end for the buyer. There are possible to appear payments for this type of companies, without the possibility to recover the goods or the already transferred sums.

To be highlighted:

- a. The registration of the advance invoice in the accountancy of the supplier, as well in the accountancy of the buyer.
- b. The financing agreement for 200,000 lei through the Start-up Nation program (registered in the accountancy of SC Alfa SRL).
- c. The collection/the payment of the advance invoice through the bank account (SC Alfa SRL has a bank credit of 200,000 RON, and the bank pays the advance of 8,330 RON to SC Student SRL).
- d. SC Alfa SRL pays a fee to the bank in amount of 2,645 lei representing a tax provided to the National Fund for the Credits Guarantee for Small and Medium Enterprises (Fondului Național de Garantare a Creditelor pentru Întreprinderile Mici și Mijlocii) – FNGCIMM).

Note: FNGCIMM is an institution created to facilitate the access of SMM to financing, by providing guarantees for the financing instruments contracted with banks or other legal entities [4].

Solution:

**Registrations in the accountancy of the supplier**

- a. The registration of the advance invoice in the accountancy of the supplier (there are several accounting treatments):

**Variant 1**

<b>4111.01</b> “Clients”	=	%	<u>8,330</u>
		<b>419.01</b> “Clients-creditors”	7,000
		<b>4427</b> “Collected VAT”*	1,330
<b>607</b> “Expenditures related to goods”	=	<b>371</b> “Goods”**	5,000

\*Note: the national legislation does not regulate the accounting registration manner for this case. The Order 1802/2014 does not regulate for the account 4427 “Collected VAT” the collection modality of the VAT in case of an annulled VAT code [3]. Still, the Order 1802/2014 regulates in Chapter 16, The functions of the accounts, article 596, that “the function of the accounts presented in this chapter is not limitative, being given as example the accounting registration of the main economic-financial operations”.

\*\*Note: the discharge is similar for all variants.

- b. the collection of the advance invoice through the bank account:

<b>5121.01</b> “RON bank accounts”	=	<b>4111.01</b> „Clients”	8,330
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We will not repeat the above formula, because it is similar for the other variants.

**Variant 2**

<b>4111.01</b> “Clients”	=	%	<u>8,330</u>
		<b>419.01</b> „Clients-creditors”	7,000
		<b>4423</b> “VAT to be paid”*	1,330

\*Note: some practitioners use directly the account 4423 “VAT to be paid”, motivating their option with the fact that the entity with the annulled code has no right to deduction and it is easier to highlight directly in this account the sum to be paid to the budget.

**Variant 3**

<b>4111.01</b> “Clients”	=	%	<u>8,330</u>
		<b>419.01</b> “Clients-creditors”	7,000
		<b>446</b> “Other tolls, taxes and assimilated payments”*	1,330

\*Note: some accounting professionals use the account 446 motivating that an entity with an annulled code should not use the VAT accounts.

#### Variant 4

<b>4111.01</b> “Clients”	=	<b>419.01</b> “Clients-creditors”*	8,330
<b>635</b> “Expenditures related to tolls, taxes and assimilated payments”	=	<b>446</b> “Other tolls, taxes and assimilated payments”*	1,330

\*Note: there is a series of professionals who do not collect the VAT to the issuing data of the sale invoice. They prefer to collect at the end of the fiscal period (monthly or semestral) or on each operation. They register the sale value including the VAT, using an accounting formula to highlight the VAT as fiscal non-deductible expense of 1,330 RON.

**Comment:** related to the highlighting modality in Variant 4, we have a different opinion: from an accounting perspective, we do not have to highlight a VAT expense at the moment of the sale, because the norms of use for the accounts do not specify this aspect. From a fiscal point of view, the legislation states that there is an obligation to collect Vat at the time of the sale. Moreover, in Variant 4, an income tax for 8,330 RON (including VAT) would be paid, which would be incorrect related to the contributor, because the duty to calculate the tax including the collected VAT is not mentioned. Fairly, SC Student SRL must pay to the budget the sum of 70 RON as tax for the incomes of micro-enterprises (7.000 x 1%), not 83 RON (8.330 x 1%).

We incline for the use of the registration from the Variant 1 in the accountancy of SC Student SRL for several reasons:

- The invoice issued by SC Student SRL must contain the VAT sum in the VAT column (the invoice include the fiscal code without the expression “RO”, thus showing to the buyer that the VAT is not deductible);
- There is a clear accountancy evidence on each invoice issued by SC Student SRL, inserted in the sales journal; therefore, the contributor and the control organs can easily verify the VAT collection;
- At the end of the accounting period, the account 4427 will be closed using the following accounting formula:

<b>4427</b> “Collected VAT”	=	<b>4423</b> “VAT to be paid”	1,330
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Thus, the debt turnover of the account 4427 must be the same as the debt turnover of the account 4423; there is a verification key for the person completing the fiscal declarations.

#### Registrations in the accountancy of the buyer

a. the highlight of the advance invoice:

#### Variant 1

<b>4093.01</b> “Advanced for tangible fixed assets”	=	<b>404.01</b> “Suppliers of fixed assets”*	8,330
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\*Note: For the acquisition from SC Student SRL (which has an annulled VAT code), the buyer SC Alfa SRL does not have the right to deduce the VAT for the respective period, even if the invoice specifies the sum of 1,330 lei in the VAT column.

**Variant 2**

%	=	<b>404.01</b> “Suppliers of fixed assets”	<u>8,330</u>
<b>4093.01</b> “Advances for fixed assets”			7,000
<b>4428</b> “Ineligible VAT”			1,330

And the highlight of non-deductible VAT:

<b>4093.01</b> “Advances for fixed assets”	=	<b>4428</b> “Ineligible VAT”	1,330
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We incline toward the registration from Variant 1, because we think it is to be avoided the use of the account 4426 (although the fiscal effect is similar), due to the denaturation of the current turnovers presented in the trial balance, by not expressing the real situation of the economic-financial operation. When Variant 2 is used, it is necessary to complete an acquisition journal for tax based and VAT acquisition.

- b. The highlight of the financing agreement for 200,000 Ron through the Start-up Nation program:

<b>4452.01</b> “Non-refundable credits with character of subventions”	=	<b>4752.01</b> “Non-refundable credits with character of subventions for investments”	200,000
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- c. The drawdown, meaning the provision of the sum of 8,330 RON by the bank (the value appears in the credit bank statement) for the payment of the debt to SC Student SRL:

<b>5121.01</b> “RON bank accounts”	=	<b>5191.01</b> “Long term bank credits”	8,330
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The payment of the advance based on the contracted credit:

<b>404.01</b> “Fixed assets suppliers”*	=	<b>5121.01</b> “RON bank accounts”	8,330
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If SC Student SRL would not have an annulled VAT code, at the moment of the advance payment, it would have been possible for SC Alfa SRL to deduce CAT using the accounting formula 4426 = 4428 in amount of 1,330 RON.

- d. SC Alfa SRL pays to the bank a fee of 2,645 RON, representing a tax provided to FNGCIMM:

<b>627</b> “Expenses with bank services and assimilated services”	=	<b>5121.01</b> “RON bank accounts”	2,645
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**Pitfalls for SC Alfa SRL:** When the public acquisition procedure is not verified attentively from the point of view of the fiscal vector, SC Alfa SRL is in the situation of impossibility to deduce a VAT amount of 1,330 RON.

We recommend for SC Alfa SRL to verify attentively the following aspects:

- The complete confirmation of the company details issued by the Registry of Commerce. A special attention must be paid to the information related to the registered office: the beginning date and the end date. When the registered office appears to be expired, the VAT code is implicitly annulled by the fiscal organs.

- A compulsory very simple verification accessing the web page with information of the inactive taxpayers (www.anaf.ro).

The consequences for SC Alfa SRL after signing the contract with SC Student SRL are:

- The payment to SC Student SRL of the invoice of 8,330 RON through a bank credit;
- The impossibility to deduce a VAT amount of 1,330 RON;
- The rejection of the payment request submitted by SC Alfa SRL to the financing authority;
- SC Alfa SRL will have to pay to the bank the sum of 8,330 lei representing the value of the contracted credit. There is a discussion according to which the value of the credit is 80% guaranteed, but we are sceptical in this case that FNGCIMM will support the “loss” of SC Alfa SRL.

We present below extracts from the Forms 394 and 300 to be submitted by SC Alfa SRL to the fiscal authorities:

**Table no.1 - Extract from Form 394, Informative declaration on the supplies/services and acquisitions inside the country**

*Partner type: companies not registered as subjects to VAT*

**THE LIST OF TAXABLE OPERATIONS IN THE COUNTRY**

(detailed on operations with reverse charge for grains, industrial crops, ferrous and non-ferrous scraps, certificates for emission of greenhouse gases, electric energy, green certificates, constructions, investment gold, microprocessors, game consoles, tablet PCs and laptops)

No.	Code and name of the product	Invoice no.	Tax base	TVA
1	34751022	1	8,330	-

The fiscal declaration 394 has an informative character, but we recommend increased attention for its elaboration, because the fiscal inspections have as starting point the differences established after the submission of the declaration by the partners.

**Table no. 2 - Extract from the Form 300 VAT expense account**

**ACQUISITIONS OF GOODS AND SERVICES IN THE COUNTRY AND THE IMPORT OF TAX FREE AND DUTY-FREE INTRA-COMMUNITY SERVICES**

Serial no.	Name of the indicators	Value	VAT
28	Acquisitions of tax free or duty-free goods and services, from which:	8,330	-
28.1	Acquisitions of tax free intra-community services (do not complete for the simplified method)	-	-

We observe in the above tables that SC Alfa SRL declares the operation as an acquisition from a company that is not subject to VAT, because, by the time when SC Student SRL will reactivate its VAT code, there will be the possibility to deduce the VAT (for SC Alfa SRL) from the period when the code was annulled.

#### 4. Conclusions

VAT represents a category of tax affecting the individuals and the legal entities. An important actor on the VAT scene is the fiscal authority that has to manage efficiently this tax category, with a significant percentage in the budget income.

The present paper analyses the commercial relation between two legal entities subjects to VAT. We took in consideration the annulment of the VAT code by the fiscal authorities.

We addressed the following questions: is it compulsory for an entity to buy goods and services from an economic agent having an annulled VAT code? Is it possible to use the VAT accounts to register the economic operations generated by the relations with the entities with an annulled VAT code?

The answer is negative for both questions and our argumentation, in the conclusions of the present paper, is as follows:

- The impossibility of the bona fide legal entity to deduce VAT after buying goods and services from another entity with an annulled VAT code;
- The acquisition cost will contain the value of the goods and the VAT, a non-recoverable tax;
- there is a major risk for the entity accessing Start-Up Nation programs due to the rejection of the payment request;
- The legal entity that accesses credits to pay the supplier with an annulled VAT code can enter rapidly in a state of insolvency;
- The newly founded entities are vulnerable in front of the possible suppliers with an annulled VAT code and an attentive verification of the fiscal vector is recommended (to the Registry of Commerce and to the fiscal authorities);
- it is recommended to avoid commercial relations with entities with an annulled VAT code and we propose for the Registry of Commerce to give the right to become entrepreneurs only to certain persons, based on well-defined criteria, as good reputation, qualification courses in the field of the activity, etc.;
- A yearly verification by each entity of the information from the confirmation of the company details. E.g.: the expiration of the registered office has terrible consequences on an entity, as the interruption of the credit lines or the annulment ex officio of the VAT code;
- We propose to the Registry of Commerce to send notification 30 days before the expiration of the registered office on the official mail address of an entity. Thus, the economic agent has the possibility to prolong (i.e. by a renting contract) the registered office and to avoid later inconveniences.

For a better management of the public acquisitions, we propose to the Registry of Commerce to include in the confirmation of the company details a mention related to the annulment of the VAT code on each page, in order to prevent the falsification of the confirmation of the company details.

#### 5. The limitations and the perspectives of the research

The research limits of the present paper are:

- The absence of a statistic to a local or national level on the entities with annulled VAT codes;

- Other reasons for the annulment of the VAT code were not taken into consideration (we only presented the case of the annulment ex officio as a result of the expiration of the registered office);

- The lack of specific accounting regulations to register in accountancy this type of commercial relations, although we admit that there are clear enough fiscal regulation for this case in the Romanian legislation.

We intend as further research to elaborate a questionnaire for the entities with an annulled VAT code and for the entities that were in commercial relations with them, in order to highlight the positive or the negative, by case, “experience” in this economic relations.

## 6. References

[1] \*\*\*, Law no. 227/2015 on the Fiscal Code, as subsequently amended and supplemented, Monitorul Oficial no. 688/2015.

[2] \*\*\*, Law no. 207/2015 on the Fiscal Procedure Code, Monitorul Oficial no. 547/2015.

[3] \*\*\*, Order no. 1802/2014 for the approval of the accounting regulations for the individual financial situations and the consolidated financial regulations, Monitorul Oficial no. 963/2014.

[4] <https://www.fngcimm.ro/despre-noi/istoric-cifre-cheie>, August 2018.