

## ADJUSTING VAT IN CASE OF INSOLVENCY PROCEDURES UNDER THE ROMANIAN FISCAL CODE AND ACCOUNTANCY LAW

Lecturer PhD. **Liliana MANEA**  
University Athenaeum Bucharest, Romania  
[lilyanamanea@yahoo.com](mailto:lilyanamanea@yahoo.com)

### **Abstract**

*The complexity of the Romanian fiscal legislation rises- up within our days even on the very difficult moments of any company. Fighting for living in case of insolvency has importance not only from creditors perspective but it puts into the light some accounting and fiscal interpretations or misunderstandings with a limited explanation by laws. Our article is trying to find out an accurate pattern for one of the most controversies of VAT area in case of the unpaid debts, when the insolvency procedures are beginning. We make a description of the importance provided by the special law of insolvency to financial documents proving the real value of creditors receivables and analyses how the fiscal law considers the economic diagnose for any suspended execution measures which should be supported by any in debt company. The idea developed throughout is a better understanding of the accounting and fiscal mixture with insolvency law as the financial indicators reflected in accountancy books are not anymore so important as creditors could decide about the value of some debts within the solvency procedure. Therefore, our article aims to present an appropriate opinion about how the fiscal interpretation could increase the company debts if VAT rules are not applied in a suitable way within the economic situation, walking in line with our life's reality.*

**Key words:** *insolvency law, VAT adjustments, debts, creditors, financial indicators*

**Classification JEL:** *M410*

### **Introduction**

Insolvency Law no. 85/2014 regulates the suspensive effect or the termination of the individual prosecution against the debtor throughout the insolvency proceedings, but the amount of the documented claim with the documents subsists to its full value, whether it is entered in the creditors' table or not. Therefore, the change in the value of a creditors' claim through an approved reorganization plan, according to the insolvency law procedure, does not totally or partially cancel the economic operation reflected in the documents proving it, but only suspends the collection of its value, depending of the success of the reorganization plan for the debtor company.

Thus, the monetary claims prior to the entry into the insolvency law procedure are subject to the suspension or, as the case may be, the cessation effect, an affirmation regulated by art. 75 (1) of the Insolvency Law no. 85/2014<sup>12</sup>. The insolvency law individualizes the category of disadvantaged claims as follows: is considered to be that category of receivables for which the reorganization plan provides for at least one of the following changes for the receivables of the respective category:

- 1) a reduction in the amount of the claim and / or its accessories, to which the creditor is entitled under this law;
- 2) a reduction in guarantees or rescheduling of payments to the detriment of the creditor without his express consent.

Correlatively to the factual situations caused by the implementation of the Insolvency Law, we continue to analyze the special provisions contained in the Fiscal Code in order to correctly determine the limits of applicability to the economic operations, which we have described above.

---

<sup>12</sup> Art. 75. - (1) All judicial, extrajudicial or enforced enforcement actions for the realization of debts on the debtor's property shall be lawfully suspended as of the opening of the procedure. Recovery of their rights can only be made during insolvency proceedings, by filing claims for admission of claims. Their re-opening is possible only if the decision to open the procedure, the revocation of the opening of the procedure or the closure of the procedure under the conditions of art. 178. If the decision to open the proceedings is dissolved or, as the case may be revoked, judicial or extrajudicial actions for making debts on the debtor's assets may be re-routed and forced execution measures may be resumed. At the time of the final decision to open the proceedings, both judicial and extrajudicial, as well as suspended forced execution ceases.

### The Fiscal code and the insolvency procedure

We consider that the provisions of the Romanian Fiscal Code distinguish between the rights and obligations of the suppliers (in this case the creditors) and those of the beneficiaries (in this case the debtors), both regarding the rules of application of the VAT mechanism and regarding the calculation of the corporation tax, if the value of the delivered goods or services cannot be cashed as a result of the bankruptcy of the beneficiary.

VAT adjustment obligation for the suppliers of goods and/or services

From VAT point of view, in the situations listed exhaustively, at art. 287 of the Fiscal Code, the suppliers of goods and / or service providers adjust their tax base after the delivery / delivery or after invoicing the delivery / delivery, even if the delivery has not been made, but the events stipulated in art. 287 of the Fiscal Code arise after invoicing and registration of the tax in the records of the taxable person.

To this end, suppliers / providers must issue invoices with the negative amounts, if the tax base is reduced or, as the case may be, without the minus sign, if the tax base is increased, which will also be passed on to the beneficiary. Considering that, according to art. 287 - Adjustment of the tax base, which provides at letter d) that: the tax base shall be reduced in the following situations: (...) d) If the value of the delivered goods or the services rendered cannot be cashed as a result of the bankruptcy of the beneficiary or following the implementation of a reorganization plan admitted and confirmed by A court judgment, whereby the creditor's claim is altered or removed. Adjustment is permitted starting with the date of the court decision confirming the reorganization plan, and in the case of the bankruptcy of the beneficiary, starting with the date of the court decision closing the procedure provided by the insolvency law, the decision remains final / final and irrevocable, as the case may be.

In a specific case, after the court decision is confirming the reorganization plan and this plan received sums related to debts modified or eliminated through the reorganization plan, the adjustment made shall be canceled corresponding to the respective amounts by the tax period in which they are collected. With the same perspective, the methodological norms for the application of this article provide that: "if the value of the delivered goods or the services rendered cannot be cashed as a result of the implementation of a reorganization plan admitted and confirmed by a court decision, the

creditor's claim is modified or removed, and the adjustment is permitted from the date of the court decision confirming the reorganization plan, if it occurred after January 1, 2016. (...) "

As a consequence, our view is that VAT adjustment if, following the implementation of a reorganization plan admitted and confirmed by a court order, whereby the creditor's claim is changed, is an exclusive right of the creditor and Not an obligation of the beneficiary.

Thus, by an way of exception, from the general rule, the Creditor may exercise this right to adjust the VAT collected but limited (the adjustment is allowed from the date of the court decision confirming the reorganization plan, if it occurred after 1 January 2016) and on a temporary basis, respectively during the period of the reorganization plan (if after the court decision confirming the reorganization plan is received sums related to the debts altered or eliminated through the reorganization plan, the adjustment made corresponding to the respective amounts by the tax period in which they are cashed).

The general rule of art. 287, requires that for the adjustment operation, the suppliers are obliged to issue an invoice according to the provisions of art. 330 Correcting invoices. The obligation to issue an invoice results from the provisions of art. 330 Correcting Documents Paragraph (2) of the Fiscal Code specifying: (2) In the situations provided by art. 287 suppliers of goods and / or service providers shall issue invoices with minus values or, where appropriate, an indication that the values are negative when the taxable amount is reduced or, where appropriate, without the sign minus or without the indication that the respective values are negative, if the tax base is increased, which shall also be transmitted to the beneficiary, except for the situation provided in art. 287 lit. d). As it results from the text of the law, the invoice issued for a negative adjustment of the tax base is not transmitted to the beneficiary company-declared bankrupt (insolvency). We also specify that the adjustment of the value added tax base provided in art. 287 lit. d) of the Fiscal Code, is allowed for invoices issued within the prescription period stipulated in the Fiscal Procedure Code.

VAT adjustment obligation for the beneficiaries of goods or/and services

Considering that, from the VAT point of view, according to the provisions of art. 304 (1) lit. b) and art. 305(4) lit. e) of the Fiscal Code, the beneficiaries are obliged to adjust the right of deduction initially exercised only for the operations provided in art. 287 lit. a) - c)

and e) of the Fiscal Code. As a consequence, in our opinion, the above-mentioned legal provision stipulates that, only in the cases of art. 287 lit. a), b), c) and e), the beneficiaries have the obligation to adjust the VAT deducted initially, not in the case of 287 lit. d).

In order to understand the economic background of any factual situation, we consider that it is necessary a priori conceptually make a delimitation, about the notion of the claim to which the Insolvency Law refers. The claimant, within the limits of the application of the Insolvency Law, is not defined or used in its broad meaning, the right of the creditor to require the debtor to give, to do or not to do anything, but in his narrow meaning, that of the claim of money. In this case, the starting point in our logical analysis is the assertion that only the amounts representing debts to the debtor before the opening of the procedure and the values of the guarantees for the cash receivables of those guarantees before the opening of the procedure, corresponding to the obligation to give, to do or not to do.

Thus, in a general sense, the holder of a claim, unpaid according to the documents resulting from it, if, for more or less objective reasons, does not subscribe to the borrower's creditor's mass, it is deprived of all the rights attaching to the creditor entitled to participate in the insolvency proceedings but not the right to collect his claim at full value. This procedural situation occurs when the non-payment of the claim puts the holder in the same position as the creditors with receivables written in the creditors' table, the passive subject of all the effects of the procedure, including, or especially, its sacrificial effects.

#### Research methodology

Our research intends to mirror how useful or not, are the accounting information provided by the debtors and creditors, for any interested persons to find a realistic way to survive in case of insolvency, in fact after the reorganization plan is approved for a company with Romanian residence. In this context our analysis aims to capture key aspects of the business in terms of economic and financial developments to interpret and recognize trends that can fit future evolution of company solvency on short time (less than 1 year). As a matter of fact will be analyzed the impact of an external event in the health company during for less than one month).

#### An empirical case studies

(i) We have a Romanian company under the insolvency proceedings, at the stage of implementing a judicial reorganization plan. The company has requested VAT reimbursement (including the

transactions generated by the business relationship with the creditors part of the approved list).

(ii) The creditors were registered at the creditor's table with some amounts corresponding to those in the company's accounts.

(iii) The General Meeting of Creditors approved for the judicial reorganization plan smaller amounts of about 25-30% of those registered at the credential table.

The debate of this article, in relation to this situation, is if the provisions of the Fiscal Code regarding the adjustment of the tax deducted from the invoices issued by the creditors for goods delivered and/or services rendered, but not paid at the moment of insolvency proceedings, are applicable for our studied company.

According to the current legislation, we consider that the judicial reorganization is the procedure that applies to the insolvency debtor, in order to increase his activity, for the benefit of the creditors, regardless of the enrollment at the creditor table. This assertion is supported by the special provisions of the Fiscal Code which do not require enrollment at the creditable mass as a condition for the exercise of the right to adjust the collected VAT, but only the existence of a final / definitive and irrevocable court decision, as the case may be.

As the reorganization procedure involves the drawing up, approval, confirmation, implementation and observance of a plan, called a reorganization plan, which may, without limitation, provide jointly or separately:

- a) the operational and / or financial restructuring of the debtor;
- b) corporate restructuring by modifying the share capital structure;
- c) restriction of activity through the partial or total liquidation of the asset from the debtor's property,

And, according to art. 140 par. (1) of Law no. 85/2014: "When the sentence confirming a plan enters into force, the debtor's activity is properly reorganized; The claims and rights of creditors and other stakeholders are modified as planned. In case of bankruptcy, it will return to the situation established by the final table of all receivables against the debtor stipulated in art. 112 par. (1), decreasing the amounts paid during the reorganization plan".

As a result, creditors retain their actions for the full amount of claims, against debtors' even if they voted for the reorganization plan.

This right to action for the full value of the claim also determines the permissive form of tax law which, at the discretion of

the creditor (to be understood here as the supplier of goods and / or services), by way of exception, for the exercise of the right to adjust the tax collected (even temporally limited - January 1, 2016).

From the point of view of the debtor-beneficiary, according to the provisions of art. 304 par. (1) lit. b) of the Fiscal Code, has the obligation to adjust the right of deduction initially exercised only for the operations stipulated in art. 287 lit. a) - c) and e) of the Fiscal Code, so in the case of 287 lit. d).

### **Conclusions**

According to art. 287 of the Fiscal Code, the tax base shall be reduced if the value of the delivered goods or services cannot be cashed as a result of the bankruptcy of the beneficiary or following the implementation of a reorganization plan admitted and confirmed by a court decision, whereby the creditor's claim is changed or eliminated.

Adjustment is permitted starting with the date of the court decision confirming the reorganization plan, and in the case of the bankruptcy of the beneficiary, starting with the date of the court decision closing the procedure provided by the insolvency law, the decision remains final / final and irrevocable, as the case may be. If, after the court decision confirming the reorganization plan has been issued, sums are received for debts modified or eliminated through the reorganization plan, the adjustment made shall be canceled corresponding to the respective amounts by the VAT return at the level of the tax period in which they are collected.

Thus, limited to the provisions of the legislation in force in this case, in our opinion, during the judicial reorganization, respecting the certainty, liquidity and eligibility of the receivables evidenced by legal documents drawn up, for the unpaid amounts at the opening of the insolvency proceedings, any taxable person from VAT point of view, retains the right of deduction without incurring the obligation to adjust.

### **References**

1. Mărgulescu D., Vasile E., Margulescu S., Diagnosis of the company's costs based on deviations, 2012; Editura LAP Lambert Academic Publishing, Germania, 2012
2. Neagu, L., Contributii la perfectionarea contabilitatii proceselor de fuziuni si achizitii de intreprinderi, Teza de doctorat, 2013
3. Teiusanu, C., Botezatu, M., Contributia auditului intern la gestiunea riscurilor intreprinderii, RVEE nr.3, Targoviste, 2012

4. Law no. 85/2014 on insolvency prevention and insolvency proceedings published in the Official Gazette, Part I, no. 466 of June 25, 2014
5. Law no.227/2015 of Fiscal Code published in the Official Gazette, Part I, no. 688 of September 10, 2015