

## cover article

### **Fiscal Inactivity: Initiation, Reactivation, Tax Implications**

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Expenses and value added tax are non-deductible for purchases made during the period in which your company or one of your business partners from whom you purchase goods or services is declared fiscally inactive. They can be deducted after fiscal reactivation in certain conditions. This article describes the situations where a company is declared fiscally inactive and how one can check the fiscal inactivity status, also analyzing the regime of expenses and value added tax during inactivation and after fiscal reactivation.

#### **Fiscal inactivity**

The fiscal procedure code mentions several situations where a tax payer can become fiscally inactive.

The practical circumstances which can lead to fiscal inactivity are related to the fiscal behavior, the relationship with fiscal authorities, the observance of corporate aspects on using the headquarters as an actual place of business, the existence of statutory bodies of the company, the renewal of the headquarters deed.

Specifically, the situations which can lead, regarding a taxpayer, to adopting a decision of fiscal inactivity, described exhaustively by the Fiscal procedure code, are:

- the taxpayer does not fulfill during the course of a calendar quarter any declarative obligation prescribed by law;
- the taxpayer circumvents the controls of the central fiscal body by declaring fiscal residence data which do not allow the fiscal body to identify it;
- the central fiscal body finds that they do not operate at the declared fiscal residence;
- temporary voluntary inactivity registered with the trade registry;
- the company's duration expires;
- the company no longer has any statutory bodies;
- the headquarters deed is expired;

#### **Who and when can establish inactivity?**

The process of fiscal inactivity is initiated by the relevant tax authority, with only one exception, that of temporary voluntary inactivity registered with the Trade Registry, when the inactivation process is started by the taxpayer.

Beyond the matter of starting the process, in all cases the inactivation decision rests with the central fiscal body.

The document upon which inactivation takes place is a written decision issued by the tax authority according to the procedure established by order of the president of the National Agency of Fiscal Administration (NAFA).

The decision is issued taking into consideration the procedural deadlines mentioned by the fiscal procedure code (e.g. 15/30 days), if applicable, and is always communicated to the taxpayer.

## **How can a taxpayer and/or its business partners verify if they are under fiscal inactivity status?**

For ensuring publicity of inactivated persons, NAFA organizes a registry of inactivated /reactivated taxpayers through the Registry of inactive/reactivated taxpayers.

This is an electronic registry and contains the following information:

- identification data of the taxpayer;
- the date they were declared inactive;
- the reactivation date;
- the name of the central fiscal body which issued the decision to declare inactive/reactivate;
- other mentions.

The registry is public, posted on NAFA's website at: <https://www.anaf.ro/inactivi/>

The procedure of identification of a taxpayer in the Registry of inactive/reactivated taxpayers is very easy. For this, two search criteria can be used: (i) by name or (ii) by fiscal identification code.

Once the taxpayer's name or fiscal identification code are inserted, the system returns either a short message saying the taxpayer is not included in the inactive list, either a detailed table containing information on the identification data and the status of said taxpayer, if they are registered as inactive.

Entry into the Registry of inactive/reactivated taxpayers is made by the issuing central fiscal body, after communicating the decision to declare inactive/reactivate, within 5 days from communication.

Taking into account that the Registry of inactive/reactivated taxpayers has a publicity role, the decision to declare inactive/reactivate has effects towards third parties from the day after the registration.

## **The tax situation applicable to cases of declared fiscal inactivity**

### **The tax situation applicable to persons declared fiscally inactive**

- **The general rule applied during fiscal inactivity**

Taxable persons residing in Romania, declared inactive according to the fiscal procedure code, who perform economic activities during the inactivity period, are subject to obligations regarding payment of taxes and mandatory social security contributions provided by the Fiscal Code.

At the same time, during fiscal inactivity, taxable persons do not have the right to deduct expenses and VAT afferent to the purchases they make.
- **The situation of VAT after fiscal reactivation**

By the amendments to the Fiscal Code as of January 1, 2017, in case of registration for VAT purposes according to the Fiscal Code art. 316 par. (12) on registration after canceling the VAT code, the taxable person may exercise their right of deduction for purchases of goods and / or services performed during the period they had their VAT registration code cancelled.

Exercising the right of VAT deduction is made by mentioning the tax in the first VAT return submitted after registration or, as the case may be, in a subsequent return, even if the invoice does not include the registration code for VAT purpose of the taxable person. The exception regarding the lack of registration code for VAT purpose only applies to this case.

After registration for VAT purpose, for deliveries of goods/services made during the period they had their VAT registration code cancelled, the taxpayers issue invoices in which they distinctly write the VAT collected during said period, and these invoices are not registered in the VAT return.

- The situation of deduction of expenses made during the fiscal inactivity period after fiscal reactivation

If the inactivity and reactivation, according to the Fiscal Procedure Code, are declared in the same fiscal year, the related expenses will be taken into account in determining the fiscal result, according to the provisions on income tax, starting with the quarter of reactivation.

If inactivity or reactivation are declared in different fiscal years, the expenses for the period of inactivity of the previous year / years / before the one when the reactivation occurs are taken into account in determining the fiscal result, according to the provisions on income tax, by adjusting the fiscal result of the year to which they relate to by submitting a corrective statement as provided by the Fiscal Procedure Code.

The expenses afferent to the inactivity period of the reactivation year shall also be taken into account for determining the fiscal result, according to the provisions on income tax, starting with the reactivation quarter.

#### The situation applicable to beneficiaries of goods and/or services provided by taxable persons declared fiscally inactive

- The general rule during fiscal inactivity

Beneficiaries purchasing goods and/or services from taxable persons residing in Romania, after registration as inactive in the Registry of inactive/reactivated taxpayers according to the Fiscal procedure code, do not have the right to deduct the expenses and the VAT afferent to said purchases.

There is only one exception, applicable to purchase of goods made during the mandatory enforcement procedures and/or procurement of goods/services from taxable persons undergoing bankruptcy, according to Law 85/2014 on procedures for preventing insolvency and insolvency, with subsequent amendments. In these cases the beneficiaries can deduct the expenses and the afferent VAT even if the seller/provider is registered as inactive taxpayer.

- The situation of the VAT after fiscal reactivation

Similarly to the rule on reactivated taxpayers and their partners, in case of registration for VAT purpose of the supplier/provider, the beneficiaries who acquired goods and/or services in the period when the supplier/provider had the VAT registration code cancelled, exercise the right to deduct VAT for said purchases.

Exercising the VAT deduction right is made upon invoices issued by the supplier/provider, by registering the tax in the first VAT return submitted after registration of the supplier/provider or, as the case may be, in a subsequent return.

- The situation of expenses made during fiscal inactivity, after fiscal reactivation

If the inactivity and reactivation of the supplier, according to the Fiscal Procedure Code, are declared in the same fiscal year, the beneficiary will consider those costs when determining the fiscal result according to the provisions on income tax, starting with the reactivation quarter.

If inactivity or reactivation of the supplier are declared in different fiscal years, the beneficiary will take into account the expenses related to the inactivity period in the year / years preceding the one in which reactivation is declared to determine the fiscal result according to provisions on income tax, by adjusting the fiscal result of the year to which they relate.

Adjustment of the fiscal result also involves submitting a correcting statement according to the Fiscal procedure code.

The expenses related to the inactivity period from the year when reactivation is declared will be taken into account in determining the fiscal result, under the provisions relating to income tax, starting in the quarter of reactivation.

## Reactivation of inactive taxpayers

If, during the period in which the taxpayer is declared inactive for reasons not related to operating in a location other than the declared fiscal residence, or not related to circumvention of tax audits, said taxpayer (i) fulfills all reporting obligations under law and (ii) does not have outstanding tax obligations, they are reactivated.

A taxpayer who has been declared inactive for reasons of operating in a location other than the declared fiscal residence or for reasons of evading tax audits, if they meet the above mentioned conditions and the central fiscal body which decided inactivation finds that they operate at the declared fiscal residence or they ascertain cooperation on tax audits, as appropriate, is reactivated.

Naturally, for reactivation to take place, the cause for which the taxpayer had been declared inactive must also have disappeared.

In case of a taxpayer for whom insolvency proceedings in simplified form were opened, a taxpayer who entered bankruptcy or a taxpayer for whom a dissolution decision was issued, is reactivated by the central fiscal body, at their request, after fulfilment of declarative obligations.

If a taxpayer is declared inactive by error, the issuing central fiscal body must cancel the decision whereby they declared the taxpayer inactive, with effects in the future and in the past.

The reactivation procedure for each individual case is made according to instructions detailed in the Order issued by NAFA President no. 3846/2015.

For additional details on this material, please do not hesitate to contact us.

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