The Fiscal and Accounting Implications in the Case of Dissolved Companies. Theoretical and Practical Application to the Company MG SRL

Grigore Marian
The Academy of Economic Studies of Bucharest,
Faculty of Accounting and Management Informatics
grigoremarian@yahoo.ro

Abstract

The paper addresses technically and practically the situations of voluntary dissolution and liquidation of companies and the fiscal and accounting implications, which can occur, being an important guide, as the way the company was established and later how it was dissolved can often have connotations in relation to the responsibility of the administrators on both the civil and the criminal aspects.

The implications, particularly those of fiscal order may lead that entity to the impossibility to cover the liabilities from exploitation of the asset, the debtor found in a state of insolvency proceedings being obliged to request the opening of insolvency proceedings (Terzea,2017, p.43).

The problems differ depending on the way the respective entity has ceased its existence and the number of tax issues, of criminal complaints filed against the administrators, by the fiscal creditor A.N.A.F. make this dissolution procedure, a stage full of legal interpretations and legislative blur.

Key words: dissolution, liquidation, merger, taxation, accounting
J.E.L. classification: K1, K4, M40, M41, M48

1. Introduction

This paper appeared in the context of a clear absence of unitary jurisprudence in the cases of dissolution and voluntary liquidation of entities, due to the various problems that arise in such cases and due to the interpretations given by the ANAF representatives, who in many cases issue taxing decisions with additional sums to be paid to the state budget, after the limitation periods for requesting such amounts. For example, many entities for which the request for voluntary dissolution and liquidation has been admitted and who have the legal possibility to be removed from the registers, are found in the situation where after the legal term provided by the Law 31/1990 - Law of Trade Companies (article 61-62), the ANAF representatives prevented this procedure and issued enforceable titles with various additional fees. In this context, the administrators are in the situation where they are forced to increase their costs with the legal services, to postpone for an uncertain period the moment when the society is being cancelled, due the fault of the ANAF representatives who proceeded to the issuance of fiscal administrative acts after the limitation period, by interpreting some normative acts.

The objective of the paper was to glean from the judicial and accounting practice of a relevant case of voluntary dissolution and liquidation, describing clearly the stages and problems encountered by an entity in this case and it tried to clarify the technical and practical aspects of this issue, so that any entity can know how to defend itself, to know that after the approval and issue of the decision to dissolve and liquidate voluntarily, respectively after the deadline for submitting an opposition, no social creditor can issue claims and can no longer claim additional sums, thus avoiding additional costs and endless processes to which the administrators may be subject to.

2. Theoretical and Practical Application to the Company MG SRL

The dissolution through the general decision of the associates is a possibility for any entity, procedure regulated by art. 227 paragraph 1 letter d) of Law 31/1990, according to which the company is dissolved also by the decision of the general meeting, at this moment the associates have the right and the obligation to decide the beginning of the dissolution process of the respective entity, as they had initially been entitled to its constitution.

In case of voluntary dissolution, case that we will present further, this is also a case of changing the provisions of the articles of association, the associates being free to decide the reasons for which they decide to terminate the economic activity of the company, and the mentioned text of law does not condition the voluntary dissolution on the absence of the company's debts toward creditors.

Practical case presentation is based on the simultaneous liquidation and dissolution procedure of MG S.R.L., a company that has worked in the field of residential and non-residential civil engineering.

The research methodology in this case was mainly based on the study of the file that was before the General Court, the jurisprudence presented in specialized books where similar cases were analyzed, including the interview and the discussions on this issue with the administrator, the lawyer and respectively, the expert accountant of the entity undergoing the dissolution and voluntary liquidation process, the case of which is presented in the paper.

The paper is particularly important in the light of the arguments and the detailed and logical presentation of the cases of voluntary dissolution and liquidation of companies, because in the legislative maze and due to the permanent change in legislation, the administrators are sometimes at a point of both civil and criminal liability, when the dissolution does not take place in strict compliance with the correct legal, fiscal and accounting procedures.

On 04.12.2017 the sole associate decided to dissolve and simultaneously liquidate MG S.R.L., pursuant to Art. 227 par. (1) letter (d) and Art. 235 of Law 31/1990 on Commercial Companies, republished, with subsequent amendments and supplements, without appointment of a liquidator, where we mentioned that after the payment of the creditors, the assets of the company belong to the sole associate, and after the filing of the documentation with the Trade Register Office attached to the Tribunal, we obtained the Resolution no. 61111 / 05.12.2017, issued in file no. 31549 / 04.12.2017, stating that it is enforceable by the rule of law.

For this purpose we have conducted the legal procedures for advertising and paid the amount of 122 lei through the Invoice - receipt no. A357 / 04.12.2017 issued by the Trade Registry Office attached to the Tribunal, so the dissolution and liquidation decision was published in the Official Gazette of Romania Part IV no. 4458 / 20.12.2017, so that any interested person and any creditor can oppose, according to the law.

On 04.12.2017 MG S.R.L had no state budget debt as it results from the Fiscal Attestation Certificate issued by A.N.A.F. ,D.G.R.F.P. Ploiești, County Public Finance Administration no. 605 / 09.11.2017 (valid for 30 days from issuance, ie until 09.12.2017).

During the dissolution and liquidation procedure, namely on 19.12.2017, we have again request another tax certificate attesting the full payment by MG SRL of all taxes and duties owed to the state budget, so that we can finalize the exact inventory of the asset and liability, as well as the payment of all creditors in order to draw up the liquidation balance sheet and we obtained the Tax Registration Certificate, without debts, issued by ANAF, DGRFP No. 31170/19.12.2017 (valid for 30 days from the issue date, i.e. until 19.01.2018, date when we were supposed to submit the Application for cancellation of the registration, as our debts to ANAF are paid as is shown in the attached attached tax certificate).

On the other hand, in the liquidation procedure of the company, as a result of its voluntary dissolution, the liquidators, if they are appointed or not, according to the Law no. 31/1990, republished, have the obligation to carry out the inventory of the company's assets and the exact determination of the assets and liabilities, in order to put an end to all social obligations, we have not pursued the prejudice of any creditor, we are the ones who have made all the necessary steps for their payment and obtaining the fiscal attestation certificates, including the drawing up of the

liquidation balance sheet on 31.12.2017, drawn up by an accounting expert company, member of C.E.C.C.A.R..

ANAF , on 08.01.2018, filed an opposition with the Tribunal against us for an outstanding debt amounting to 10,000 lei and started a tax inspection in violation of the procedure of notifying tax administrative acts, respectively the failure to communicate the tax inspection notice, whereas they were not sure of the amounts we owe, violating the principle of tax stability that in the economic vision means maintaining them at the same level of their yield in all phases of the economic cycle, having also a legal variant which lies between two limits: neither the fiscal immobility can be admitted, nor the permanent disruption in tax matters (Bufan, 2016, p. 101).

ANAF through its representatives, tried to describe a situation concerning the carrying out of a partial tax inspection , started tardy, after 04.12.2017 when the simultaneous dissolution and liquidation of the company was decided, mentioning in a report that ANAF has not given the tax inspection notice to any the legal representative, but considers the tax inspection to be started with 27.12.2017 as the payer, our company, is in a state of insolvency, totally false, since we are not subject to insolvency as provided by Law 85/2014 concerning insolvency and insolvency prevention procedures, precisely to mislead both the court and the hierarchically superior body within the institution, and in this way the principle of legality established by the Romanian Constitution, which provides for the organization of the social relations in accordance with the regulations existing is violated (Costas et all, 2018, p.34).

According to Art. 233 of Law 31/1990, republished, the dissolution of the company has the effect of opening the procedure of liquidation of the company. From the moment of dissolution, the managers, administrators and the directorate may no longer undertake new operations, a prohibition which shall apply from the day of expiry of the fixed term for the duration of the company or from the date when the dissolution was decided by the general meeting or declared by a court order. The Company retains its legal personality for the liquidation operations until its completion. With the opening of the dissolution procedure, the liquidation procedure must be triggered also, this being a legal obligation.

The opposition was rejected because the sums were paid up to the first term of the trial and the tax inspection and the subsequent amounts estimated after the 30-day period since the dissolution and liquidation decision was published in the Official Gazette of Romania, were considered to be issued too late, but with serious implications for the dissolved company whereas money were withdrawn from its current account, based on an enforceable title issued too late, which was the result of the liquidation, and the beneficiary was the sole shareholder and not the social creditor. As a conclusion, due to the ANAF mistakes the sole shareholder is going to recover subsequently his money cashed wrongly by A.N.A.F. , so we have brought to light the lack of unitary application of the legal provisions and the impediment of economic agents in a bunch of problems, regardless of what stage the company was in: to be set up or to be dissolved and liquidated.

3. Tax implications during the dissolution and liquidation procedure

Include, as a rule, the profit tax at the share of 16 %, the dividends taxed at the share of 5% and VAT at the share of 19 %. When an entity which is being liquidated with legal entities as shareholders, with a share capital of 10000 lei (50% each) and fixed assets with a total value of RON 1,500,000 (fair value), it will be shown what tax implications belong to the company being liquidated, as well as what taxes should be calculated and paid.

According to Law 227/2015 on the Fiscal Code, "as regards the value added tax, any distribution of goods from the assets of a taxable person to its associates or shareholders, including a distribution of goods related to the liquidation or dissolution without liquidation of the taxable entity, except for the transfer, constitutes a supply of goods effected with payment if the tax relating to the property or parts thereof has been wholly or partially deducted".

In order to correctly determine the date from which the tax adjustment begins, in the case of capital goods, is not the transfer date as is incorrectly anticipated, but the date of obtaining the asset by the transferor. Thus, the transferor will have to hand over to the transferee the documents signed according to the original, a copy of the capital goods register, if these are obtained after the date of accession. "The application of the tax regime for the transfer of assets by the taxable entities will

not be sanctioned by the tax inspection bodies, in the meaning of cancelling the right to deduct the tax to the beneficiary, if the transactions in question are taxable by law or by option, except where it is found that the transaction was taxed for tax purposes "(https://chat.anaf.ro/ANAFI.nsf..)

As regards the taxable profit in case of liquidation, according to the Methodological Norms for the application of Law 227/2015 regarding the Fiscal Code, this is calculated as the difference between the incomes and expenses incurred for their realization, calculated cumulatively from the beginning of the fiscal year, taking into account:

- the profit from liquidating the patrimony of the entity to be liquidated;
- the amounts from cancelling the provisions of that entity;
- the amounts registered in equity established initially from the gross profit and which have not been previously taxed at the date of incorporation;
- other items similar to the income and expenses of the liquidated entity.

In the calculation of the tax on profit from liquidation due by the taxpayers who cease to exist, the following are not taxed after the liquidation operations are made:

- the reserves that ere initially constituted from the net profit;
- the amounts related to the legal deductions from the tax share, allocated as own sources of financing during the existence of the entity, according to the law;
- the reserves constituted in currencies by exchange differences favoring the share capital or from valuation of the liquidity, in accordance with the normative acts in force, unless the law provides otherwise.

The taxable profit in the case of liquidation shall be calculated as the difference between the incomes and expenses incurred for their realization, calculated cumulatively from the beginning of the fiscal year, taking into account:

- the profit from the liquidation of the patrimony;
- the amounts from the cancellation of provisions;
- the amounts registered in equity accounts constituted from the gross profit and which were not taxed at the date of incorporation, other items similar to income and expenses. For the purpose of calculating the taxable profit these amounts are elements similar to revenues.

4. Accounting implications during the dissolution and liquidation procedure

In accordance with the provisions of Article 28(1) of the Accounting Law 82/1991, republished, in case of liquidation, the company has the obligation to draw up the annual financial statements, sometimes due to lack of jurisprudence there are interpretations of the law, and in the case of the companies that are to be dissolved and have foreign capital or fall within the scope of consolidated accounts, the development of accounting conversion dictionaries is implied (Ristea et all, 2009, p.36).

According to art. 36 par. (3) during the liquidation period, the company in liquidation, according to the law, submits, within 90 days from the end of each calendar year, to the territorial units of the Ministry of Public Finance an annual accounting report, the content of which is established by order of the Minister of Public Finance.

The legal and mandatory operations that are to be performed in the case of dissolution and liquidation of companies are covered by the Methodological Norm on reflecting in accounting the main operations of merger, division, dissolution and liquidation of companies, as well as the withdrawal or exclusion of some associates from the companies and the tax treatment approved by OMPF 1376/2004, as follows:

1. The inventory and assessment of the assets and liabilities of the companies to be liquidated, according to the Accounting Law 82/1991, republished, the accounting rules and regulations, the registration of the inventory and evaluation results, made on this occasion.The role of inventory procedure in the controlling action is to establish the integrity of the patrimony (Dumitrana, et al, 2008, p.147).

2. Preparation of the financial statements by the companies that are to be liquidated; the fixing by the general meeting of shareholders or associates of the operations to be carried out by the liquidator on behalf of the company ; exploitation of asset elements (sale of fixed assets and stocks, collection of receivables, short-term financial investments, etc. ; payment of the company's

debts to the state budget, to the state social insurance budget, and of other social obligations to other funds, employees and other third parties;

3. Determination of the outcome of the liquidation (profit or loss); the calculation, withholding and transfer of the tax on profit/income and the tax on income from dissolution / liquidation; drawing up of the balance sheet for division.

4. Dividing the company's equity (net asset), resulting from the liquidation of the company, according to:

a) the provisions of the statutes and / or of the company contract;

b) the decision of the general meeting of shareholders / associates, recorded in the general meetings register;

c) the participation in the share capital.

The division consists of dividing the equity (net asset) resulting from the liquidation, between shareholders or associates of the company.

5. Conclusions

As a result of the company's liquidation, the cancellation from the Trade Register will also take place.

Whereas in Romania accounting is interconnected with taxation, we ask the competent bodies: why the legislation regarding the judicial liquidation procedure isn't detailed enough, in the meaning of clearly indicating the accounting and legal aspects regarding the bankruptcy procedure. (Cenar et all, 2006,p.365).

In the case presented before, the social creditor ANAF, had mistakenly placed the company that has been dissolved and liquidated voluntarily, in the category of companies for which the insolvency proceedings has been triggered, running a late tax inspection for which it estimated other debts compared to those demanded in the opposition, thus breaking art. 96 of Law 207/2015 on the Fiscal Procedure Code stating that "the tax authority waives the tax claim and does not issue a tax decision whenever it finds the cessation of the legal person".

The conclusion is that jurisprudence on this matters is missing and there is no unitary application of the law and of the cases resolved similarly in the territory, causing material and financial damage to the companies under dissolution and voluntary liquidation, as we mentioned above.

6. References

- Bufan, R., 2016. *Tratat de drept fiscal,Volumul 1. Teoria generala a dreptului fiscal*, Bucharest: Hamangiu Publishing House
- Cenar I., Deaconu S.C., 2006. *Viata contabila a intreprinderii de la constituire la faliment*, Bucharest: CECCAR Publishing House
- Costas, C.F, Put, S.I, Gherman, A.M., Muresan, A.M. 2018. *Drept fiscal si financiar –caiet de seminar*, Bucharest: Hamangiu Publishing House
- Dumitrana, M., Jalba, L., Duta, O. 2008. *Contabilitatea in comert si turism*, Bucharest: Universitara Publishing House
- Ristea, M., Dumitru, C.G., Ioanas, C., Irimescu, A. 2009, *Contabilitatea societatilor comerciale, vol.1*, Bucharest: Universitara Publishing House
- Terzea, V. 2017*, Contenciosul fiscal –Practica judiciara adnotata si reglementarea din noul Cod de procedura fiscala*, Bucharest: Hamangiu Publishing House
- Accounting Law no. 82/1991.
- Law 85/2014 concerning insolvency and insolvency prevention procedures.
- Law 207/2015 on the Fiscal Procedure Code.
- Law 227/2015 on the Fiscal Code.
- The Law of Companies no. 31/1990 .
- The Methodological Norm on reflecting in accounting the main operations of merger, division, dissolution and liquidation of companies, as well as the withdrawal or exclusion of some associates from the companies and the tax treatment approved by OMPF 1376/2004.
- <https://chat.anaf.ro/ANAFI.nsf .. >[Accessed 05 May 2018].