Advances in the quest to reduce tax litigation in Brazil

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Unsurprisingly, tax litigation in Brazil is a chronic problem. Administrative and judicial disputes involving taxes represent, on average, 57% of the annual revenue of the Brazilian operation of multinational companies. If compared to other countries, for these companies, tax disputes are equivalent to 98.7% of all their dispute[1].

In an attempt to equate this scenario, there has been a lot of talk about instruments for resolving disputes and reducing litigation.

The Civil Procedure Code provides for dispute settlement mechanisms, which have, as a consequence, reduced litigation. One of them is the judgment of certain themes under the rite of repetitive appeals and general repercussion. The orientation formed by the Superior Courts (STJ and STF) must be compulsorily observed by the jurisprudence, as prescribed by article 927 of the Codex procedural. According to a study carried out by Insper, the increase in issues judged under the system of repetitive appeals between 2016 and 2021 reflects the greater reduction in the stock of tax cases in the STF (reduction of 49.1%) and in the STJ (Superior Justice Tribunal), (reduction of 37.3%)[2].

Despite all this effort, the response of the Judiciary is still usually delayed. For this reason, alternative conflict resolution instruments are proving to be effective in reducing litigation.

The tax transaction is one of these important instruments to extinguish the tax credit, provided for in the National Tax Code since 1966 and regulated at the federal level only in 2020 with Law Number 13,988.

For a long time, there was the impression that the implementation of the tax transaction could generate an alleged violation of the unavailability of public goods and fiscal responsibility. However, this instrument has proved to be an important means of collecting and reducing costs – allied to the proper treatment of taxpayers .

The numbers generated by the tax transaction at the federal level confirm its relevance: until last year, R$ 6.4 billion in debts registered in the Federal Active Debt - corresponding to 20% of the amount collected by the PGFN (General Attorney of the National Treasury) in 2021[3].

The amounts recovered with the tax transaction must increase over the next few months, since the RFB (Brazilian Federal Revenue) also regulated its use for debts in tax administrative litigation.

Currently, there are more than 8 types of tax transaction open before the PGFN and the RFB (Brazilian Federal Revenue) apart from the possibility for the taxpayer to take the initiative to negotiate with such entities (individual transaction).

The tax transaction presupposes mutual concessions by taxpayers and the Federal Tax Authorities for its improvement. Taxpayers willing to negotiate may, depending on the case and the type of transaction, (1) obtain discounts of up to 65% of the debt transacted, (2) use tax loss credits, negative basis of CSLL (Social Contribution on Net Income), resulting from a final and unappealable court decision, and precatories to amortize debts, and (3) pay your debts in up to 120 months.

Precisely because it is an instrument of self-composition, the taxpayer and the tax authorities must be sensitive to the concrete situation in order to effectively settle the tax liability.

One must not expect there to be a protagonist in the tax transaction, given that such a role presupposes the existence of an adjunct. It is expected that there will be a balanced exchange between the parties, with a balanced adjustment of wills.

Some aspects deserve to be matured and rethought, but it cannot be denied that this mechanism is already a relevant reducer of disputes. And it will certainly help national growth, as it generates cost reduction in the management of the public machine and is in line with the OECD (Organization for Economic Co-operation and Development) recommendations: the creation of solutions to reduce tax litigation and encourage compliance with the respective legislation.

NOTES:

[1] Data obtained from a study by INSPER - Diagnosis of Brazilian Tax Litigation that was released in June 2022.

[2] Idem.

[3] Data released by the National Treasury Attorney's Office on its website.