A New Era in Brazilian Tax Litigation

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Historically, tax disputes in Brazil have been steeped in a culture of litigation, often encouraging prolonged legal battles. The delays in resolving critical issues, both at the administrative level and in the courts, led to a loss of trust and widespread dissatisfaction with the long wait for resolution.

This (former) situation prompted the legislator to propose alternative methods of dispute resolution, which does not depend on a decision by the courts – and the shift has provided greater predictability and certainty to the parties involved in tax disputes.

Although the mechanisms themselves are not new to Brazilian law, the legislation and regulations governing "Procedural Agreements" (NJP – Negócio Jurídico Processual) and tax settlements are relatively recent.

The regulations on NJPs were issued by the National Treasury in 2018, under PGFN Directive (Portaria) 742/2018. NJPs allow the taxpayer and the tax prosecutors to negotiate procedural aspects of tax claims, such as plans for payment of the tax debt in instalments, matters involving the acceptance, valuation, replacement and release of security for tax debts under collection, and the means used to seize or sell assets.

An NJP can be highly advantageous for taxpayers in some circumstances, particularly to prevent the enforcement of security before the courts have issued a final decision, thus avoiding new disputes.

Federal tax settlements were introduced by Provisional Measure 899/2019, which became Law 13.988/2020. Today, taxpayers have the opportunity to enter into settlements for payment of their tax debts, whether or not the debts have become subject to collection through the courts, with discounts and other benefits, depending on their ability to pay.

The settlement proposal can come from either the tax authorities or the taxpayer, depending on the status of the debt. Discounts and the use of tax credits to settle tax debts are decided by the tax authorities, which will take into account the taxpayer's financial circumstances and the specific characteristics of the debt to be settled.

An indication of the importance of tax settlements to the public coffers can be found in the provisions under Law 14.689/2023 which offer taxpayers special, more beneficial conditions for settlement of tax debts at the administrative level, when the decision by the administrative appeal panel was not unanimous, taken by "casting vote".

There can be no doubt that tax settlements have significantly reduced tax litigation and the tax gap, at the same time they support timely payment of taxes and taxpayers' financial health.

Alternative methods for resolution of tax disputes serves the public interest:

they have made it possible to recover amounts of unpaid tax which the tax authorities often considered unrecoverable, they avoid burdening the already overloaded court system, and they bring efficiency and effectiveness to collection of taxes.

Conciliation and pursuit of a mutually satisfactory outcome should be the spirit underlying agreements made between the tax authorities and taxpayers. There is no winner or loser in the agreement; rather, each party makes concessions to meet the other’s expectations and realities.

This is indeed a new chapter in the history of tax litigation in Brazil.

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