



## Tax incentives and the principle of legality: legal and economic analysis

Tax incentives and the principle of legality: a legal and economic analysis

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### SUMMARY

This article analyzes tax incentives in light of the principle of legality, exploring their legal, constitutional, and economic aspects in the Brazilian tax system. Such incentives, as tax waivers intended to promote sectors or regions, must strictly observe legality (CF, art. 150, I; CTN, art. 97) and the limits of tax jurisdiction (CF, arts. 155 and 156). Concessions without legal support violate the federative pact and may be unconstitutional (CF, art. 60, §4, I).

STF jurisprudence, such as Binding Precedent 10, reinforces the requirement for a formal legislative process. In the economic sphere, incentives affect revenue collection and competition, being used in fiscal warfare, with negative effects on federal balance and regional development.

Additionally, it is observed that the absence of uniform criteria for granting these benefits deepens inequalities between federative entities.

Furthermore, the lack of transparency and effective institutional oversight mechanisms weakens the evaluation of results and the accountability of public officials. Therefore, a more coordinated, efficient fiscal policy is advocated, compatible with the constitutional principles of legality, equality, and morality.

**Keywords:** Tax incentives; Legality; Tax war.

### ABSTRACT

The article analyzes tax incentives in light of the principle of legality, exploring their legal, constitutional, and economic aspects within the Brazilian tax system. Such incentives, as tax waivers intended to promote specific sectors or regions, must strictly comply with legality (CF, art. 150, I; CTN, art. 97) and the limits of tax authority (CF, arts. 155 and 156). Grants without legal support violate the federal compact and may be deemed unconstitutional (CF, art. 60, §4, I). Supreme Court jurisprudence, such as Binding Precedent 10, reinforces the requirement of a formal legislative process. In the economic sphere, incentives affect revenue and competition, being used in the tax war, with negative effects on federal balance and regional development.

Additionally, it is noted that the absence of uniform criteria for granting these benefits deepens inequalities among federal entities.

Furthermore, the lack of transparency and effective institutional control mechanisms weakens the evaluation of results and the accountability of public managers. Thus, a more coordinated and efficient fiscal policy, consistent with the constitutional principles of legality, equality, and morality, is advocated.

**Keywords:** Tax incentives; Legality; Tax war.

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## 1. INTRODUCTION

Tax incentives are mechanisms used by the State to promote development economic, social and regional, through the reduction or exemption of taxes. They are granted with the objective of stimulating economic activity in certain areas or sectors, as a way of achieve extra-fiscal public policies. In Brazil, such incentives can manifest themselves in a variety of ways ways, such as exemptions, tax rate reductions, presumed credits or postponement of payment of taxes. These benefits are, as a rule, established by specific laws that aim to achieve goals such as increasing competitiveness, attracting investment and reducing inequalities regional.

In the context of the Brazilian tax system, tax incentives play a role important in regulating and directing the country's economic policy. They aim not only promote economic growth, but also correct economic distortions, improve income distribution and promote the development of strategic sectors of the economy. For these incentives to be effective, it is essential that they are implemented within the limits established by the Constitution and infra-constitutional legislation, thus ensuring legality and the transparency of the tax operations carried out.

The granting of tax incentives must therefore be aligned with the principle of legality, provided for in article 150, section I, of the Federal Constitution of 1988, which establishes that the creation and modification of taxes and tax benefits must be previously authorized by law. This principle guarantees predictability and legal certainty for taxpayers, preventing the actions of the State is arbitrary. Furthermore, respect for legality ensures that the granting of these incentives is in accordance with the federative pact, respecting the tax powers of the different entities federative and avoiding distortions that could harm the harmony of the national tax system.

## 2. THEORETICAL FRAMEWORK

### 2.1 PRINCIPLE OF LEGALITY IN TAX LAW

#### 2.1.1 Justification of the Principle of Legality (Art. 150, I, of the CF/88)

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The principle of legality is one of the fundamental pillars of Brazilian Tax Law, enshrined in article 150, paragraph I, of the Federal Constitution of 1988. This principle establishes that no tax can be instituted, modified or extinguished without a formal law authorizing it, which ensures predictability and control over public revenue. Tax legality is

crucial for maintaining the balance between the State and taxpayers, as it prevents the arbitrary exercise of the taxing power. The creation of tax incentives, therefore, must follow the same logic and be duly authorized by law, respecting constitutional parameters and avoiding abuses by the tax administration.

## **2.2 The Relationship between Legality and Legal Certainty for Taxpayers**

Observance of the principle of legality in the tax sphere is not limited to the creation of taxes, but also extends to the granting of tax benefits. The legal security of taxpayers is directly linked to the predictability and transparency of the rules governing the tax system. When legality is respected, the taxpayer can plan his economic activities with the certainty that the tax benefits to which you are entitled are legitimate and adequately regulated. In this way, the principle of legality ensures that the tax process is carried out within the limits established by law, ensuring that citizens' rights are protected and avoiding that the State adopts arbitrary measures that may harm the taxpayer.

## **2.3 The Definition and Function of the Legislative Process in the Creation of Taxes and Tax Benefits**

The legislative process plays a fundamental role in the creation and modification of taxes and tax benefits, since it is through this that decisions related to the tax burden and granting tax incentives takes legal form. The legislative process in Brazil is governed by Federal Constitution and infra-constitutional norms, and any change in the system tax, including the granting of tax exemptions or reductions, must be subject to the scrutiny of the legislator. This process ensures that the creation of taxes and the granting of tax benefits do not are the result of arbitrary or discretionary acts, but rather of a democratic and well-founded debate, ensuring participation and social control over tax decisions.

## **2.4 The Role of the National Tax Code (CTN) in Regulating Tax Incentives (Arts. 97 and 176)**

The National Tax Code (CTN) plays a crucial role in regulating the system Brazilian tax system, including the discipline of tax incentives. Articles 97 and 176 of the CTN establish clear rules on the granting of tax benefits, such as exemptions and reductions taxes. Article 97, for example, provides that the granting of exemptions, as well as other tax benefits, can only be carried out through specific legislation, ensuring that such benefits are granted transparently and based on legal criteria. Article 176

complements the tax incentive regime by defining the conditions under which states can grant ICMS exemptions, always respecting the limits and powers established by Constitution and federal regulations. The CTN, therefore, in addition to ensuring legality in the process granting tax incentives, plays an essential role in the organization and harmonization of tax system, ensuring that tax laws are applied consistently and fairly.

### **3. GRANTING OF TAX INCENTIVES: LEGAL REQUIREMENTS**

#### **3.1 The Need for Legislative Authorization to Grant Tax Incentives**

The granting of tax incentives requires, as an essential condition, legislative authorization prior and express. This means that only through the enactment of a specific law, approved by the competent legislative branch, it is possible to establish tax benefits. This requirement arises directly from the principle of tax legality, provided for in art. 150, I, of the CF/88, and has as purpose to ensure transparency, predictability and democratic control of tax waivers practiced by the State.

#### **3.2 The Impact of Complementary Legislation, such as Complementary Law No. 24/1975, on ICMS**

Complementary Law No. 24/1975 establishes that any exemption, reduction of the calculation basis or presumed credit related to ICMS must be previously authorized by an agreement signed between the States and the Federal District within the scope of CONFAZ. This rule aims to prevent unilateral concession of tax benefits that may generate competitive imbalance between federative entities, configuring a tax war practice. Failure to observe this rule makes the incentive irregular and liable to be declared unconstitutional. Furthermore, it reinforces the need for cooperation between federated entities to ensure the harmony of the national tax system.

#### **3.3 The Tax Jurisdiction of States, Municipalities and the Union in Granting Benefits**

##### **Inspectors**

Tax jurisdiction is regulated in articles 145 to 162 of the Federal Constitution, with highlight articles 155 and 156, which grant States and Municipalities the power to establish and manage their taxes. However, this competence must be exercised within the limits of legality and of complementary federal legislation. The granting of incentives outside these parameters constitutes violation of the constitutional order and may generate legal and administrative sanctions for the offending entities.

### **3.4 The Jurisprudence of the Federal Supreme Court on the Legality of Tax Incentives (Binding Summary No. 10)**

The jurisprudence of the Federal Supreme Court (STF) reinforces the need for observance strictly adhere to the principle of legality in granting tax incentives. Binding Precedent No. 10 determines that the declaration of unconstitutionality of a law or normative act can only occur by absolute majority of the competent body, observing the plenary reservation clause provided for in art. 97 of the CF/88. This guideline reaffirms that it is not up to the Executive or Judiciary Branch to remove legal norms unilaterally, under penalty of violating the principle of separation of powers and due legislative process.

## **4. THE TAX WAR AND ITS ECONOMIC IMPACTS**

The fiscal war represents one of the main dysfunctions of the Brazilian federative pact, affecting directly the balance of tax collection, legal certainty and competitiveness between federative entities. Based on the granting of tax benefits without due legal authorization, this practice triggers a series of relevant economic and legal effects, requiring constant normative and institutional mediation.

### **4.1 Fiscal War: Concept and Relationship with Tax Incentives**

The fiscal war consists of the dispute between the federated entities, especially the states, which unilaterally grant tax incentives — such as reductions, exemptions and presumed credits ICMS — with the aim of attracting investment and boosting the local economy. This practice, although understandable from the perspective of regional development, violates the principle of tax legality and requirement of prior approval by the National Council for Tax Policy (CONFAZ), provided for in article 155, §2, XII, "g" of the Federal Constitution. The absence of valid agreements makes the illegitimate and sometimes null incentives, which compromises the predictability of relationships business.

### **4.2 Economic Consequences of the Tax War: Distortions in Revenue Collection and Competitiveness**

The effects of the fiscal war are widely detrimental to the national economy. First, place, there is a clear distortion in tax collection, with states more aggressive in granting incentives losing potential revenue, which compromises the provision of public services. Secondly, place, a competitive imbalance occurs, since companies located in states with larger benefits enjoy undue advantages over competitors from other states. This

impacts the efficient allocation of resources, causes artificial displacement of investments and weakens the federative pact, fostering a scenario of legal uncertainty and fiscal instability.

#### **4.3 The Role of CONFAZ and Interstate Agreements in Reducing the Tax War**

The National Council for Tax Policy (CONFAZ) is the body responsible for approving, by unanimously, the interstate agreements that authorize the granting of tax benefits. Its role is essential for the coordination and harmonization of state tax policies, in order to avoid economic and legal imbalances. However, the requirement for unanimity in decisions has been criticized for allowing minority states to veto, which in practice encourages unilateral concession and informal incentives. The jurisprudence of the Supreme Federal Court has reinforced the unconstitutionality of these unapproved benefits, seeking to repress the tax war through of binding decisions.

#### **4.4 Fiscal Harmonization: Strategies and Impacts on Economic Stability**

Overcoming the tax war requires the adoption of structural tax harmonization measures. Among them, the approval of the tax reform stands out, which proposes the replacement of the ICMS with a national value added tax (VAT), with uniform legislation and equitable distribution of revenue. Furthermore, the improvement of CONFAZ rules, the partial validation of incentives already granted (as occurred with Complementary Law No. 160/2017) and the creation of mechanisms for federative compensation are instruments that contribute to the reduction of regional inequalities without compromising the federative balance. Fiscal harmonization, therefore, is an indispensable condition for macroeconomic stability, legal certainty and strengthening of cooperative federalism in Brazil. In this sense, the construction of a political consensus between the Union, States and Municipalities becomes essential to guarantee the effectiveness of these measures.

### **5. ECONOMIC ASPECTS OF TAX INCENTIVES**

Tax incentives are economic policy instruments used by federative entities to induce desired behaviors, such as increased investment, job creation and regional development. Despite their widespread use, the effects of these incentives on economy and public revenue are complex and often controversial, requiring analysis critical as to its real effectiveness and cost-benefit.

#### **5.1 Analysis of the Effects of Tax Incentives on Public Revenue**



From a tax point of view, incentives immediately result in a loss of revenue.

The granting of exemptions, tax rate reductions or presumed credits compromises revenue collection tax, impacting the public budget and the State's ability to provide essential services.

This renunciation, when not accompanied by a proportional increase in economic activity and taxable base, may result in a fiscal deficit and the need for adjustment in other areas of the budget. Furthermore, in a context of fiscal war, revenue collection becomes even more unpredictable and subject to distortions between the entities of the federation.

## **5.2 Tax Incentives as a Factor in Regional Development and Investment Attraction**

From the perspective of economic development, tax incentives have been widely used as mechanisms to attract companies and stimulate investments in less developed. In some cases, reducing the tax burden is a decisive factor in locating ventures, which can generate jobs, increase local income and boost the economy regional. However, empirical studies show that the effectiveness of these benefits varies significantly, being conditioned by other structural factors, such as infrastructure, workforce qualified labor and legal certainty. When poorly planned, incentives can have negative effects ephemeral and not sustainable in the long term.

## **5.3 Tax Incentives and Economic Efficiency: Between Benefits and Costs**

The analysis of the economic efficiency of tax incentives requires a comparison between the benefits generated (such as jobs, investments and increased regional GDP) and fiscal costs incurred (revenue loss and its impacts on public coffers). In many cases, the costs outweigh gains, especially when incentives are granted without technical criteria or mechanisms for periodic evaluation of results. The lack of transparency and instruments of control makes it difficult to measure its real effectiveness, contributing to the maintenance of benefits ineffective and worsening federal inequalities.

## **5.4 The Influence of Tax Incentives on the Competitiveness of Companies and States**

Tax incentives directly influence competitiveness, both between states and between companies. From a federative point of view, the asymmetrical granting of benefits creates a scenario unequal, in which companies located in more generous states have competitive advantages artificial, to the detriment of fair competition and regional balance. From the point of view

business, this can lead to productive location decisions not based on efficiency, but on tax benefits, which compromises long-term economic rationality. This competition fiscal, without national coordination, intensifies the fiscal war and leads to a loss of allocative efficiency in the Brazilian economy.

## **6. CONSTITUTIONAL IMPLICATIONS AND THE FEDERAL PACT**

Tax incentives, although legitimate instruments of economic and tax policy, must be analyzed in light of the Federal Constitution of 1988, especially with regard to principles of equality, legality, administrative morality and the preservation of the federative pact. The unbridled and uncoordinated use of these mechanisms, especially in the context of war fiscal between states, has raised questions about its constitutionality and the effects negative effects on harmony between the entities of the Federation.

### **6.1 The Principle of Equality in the Granting of Tax Incentives**

The principle of tax equality, provided for in article 150, paragraph II, of the Federal Constitution, prohibits unequal treatment between taxpayers who are in an equivalent situation. The granting tax incentives without objective and uniform criteria may constitute a violation of this principle, since it privileges certain economic sectors or geographic regions in to the detriment of others. Furthermore, incentives granted unilaterally, without the authorization of the National Council for Financial Policy (CONFAZ), deepen regional inequalities, creating competitive asymmetries incompatible with the federative model and fiscal justice.

### **6.2 Harmony between the Federative Entities and the Distribution of Tax Revenues**

The Brazilian federative pact is based on the autonomy of the federated entities and on cooperation among them, according to articles 1 and 60, §4, of the Constitution. The disorderly granting of benefits tax authorities compromise this harmony by unbalancing revenue collection between states and municipalities, affecting directly the revenue sharing system, such as the State Participation Fund (FPE) and of Municipalities (FPM). This practice also undermines the inter-regional balance sought by constituent, as richer states or those more aggressive in their fiscal policy end up attracting investments to the detriment of others, without this necessarily representing greater efficiency economic.





### 6.3 Monitoring Tax Benefits and Legality Control

The granting of tax incentives must comply with the constitutional principles of legality, publicity and administrative morality. Article 155, §2, item XII, item "g", of the Constitution Federal, requires that any benefits related to ICMS be granted through the execution of agreement within the scope of CONFAZ, under penalty of unconstitutionality. The monitoring of these benefits is up to the audit courts, the Public Prosecutor's Office and the Judiciary, which have acted in this regard to invalidate irregular incentives and order the refund of amounts. Judicial control of the legality of incentives is essential to prevent abuse and ensure the integrity of the tax system national.

### 6.4 The Federative Pact and the Unconstitutionality of Irregular Tax Incentives

Tax incentives granted outside of federal legislation and without CONFAZ approval have been repeatedly deemed unconstitutional by the Supreme Federal Court (STF). The Court's majority understanding is that such practices violate the federative pact and promote economic and fiscal imbalances between federative entities. ADI 2441/DF, for example, reaffirmed that unilateral ICMS incentives, without unanimous approval from CONFAZ, violate the Constitution. This case law reinforces the need for uniformity and coordination in granting of benefits, under penalty of fragmentation of the tax system and weakening of the federation.

## 7. THE NEED FOR GREATER TRANSPARENCY AND INSTITUTIONAL CONTROL

The granting of tax incentives, as it involves a waiver of public revenue, requires levels high levels of transparency, control and evaluation of results. The lack of effective mechanisms for monitoring favors distortions in the tax system, anti-competitive practices and, above all, compromises the legitimacy of the fiscal policy adopted by the federative entities. In this context, the institutional performance, especially of external and internal control bodies, becomes indispensable for guarantee the legality, economy and efficiency of these benefits.

### 7.1 The Relevance of Transparency in Granting Tax Incentives

Transparency in the granting of tax incentives is directly related to the principle of publicity (art. 37, caput, of the Federal Constitution), being essential for society and the bodies control systems can monitor the effects of revenue waiver on public finances and on the fulfillment of fiscal targets. The Fiscal Responsibility Law (LC No. 101/2000), in its article 14, requires an estimate of the budgetary impact and compensatory measures for any waiver

fiscal. However, in practice, many incentives are granted in an opaque manner, making it difficult to evaluation of its effectiveness and the real beneficiaries of public policies.

## **7.2 Proposal for Expanding Institutional Control and Periodic Evaluation of Incentives**

The implementation of more robust institutional control mechanisms aims to ensure that tax incentives fulfill their social and economic objectives. Periodic evaluation of incentives must consider not only the revenue impact, but also job creation indicators, stimulating innovation, regional development and social return. It even proposes the creation of collegiate evaluation bodies, composed of representatives of the public administration, legislative and civil society, with the authority to analyze the relevance and continuity of the benefits, avoiding the perpetuation of ineffective or unnecessary incentives.

## **7.3 The Role of the TCU and State Audit Courts in Monitoring**

The Federal Court of Auditors (TCU) and the state Courts of Auditors have jurisdiction to monitor the granting of tax benefits, especially regarding compliance with the rules legal and constitutional, to the analysis of fiscal impact and to the observance of the principles of administration public. These institutions have promoted audits and technical studies on the effects of incentives for tax collection and efficient tax management. Furthermore, they have been recommending the adoption of integrated registration systems, active transparency and accountability on incentives granted, as a way of strengthening social and institutional control.

## **7.4 Models and Strategies for Good Practices in Granting Tax Incentives**

Several countries have adopted good practices in granting tax incentives, based on transparency, impact assessment and benefit conditionality. Models such as the Canada, Germany and Australia stand out for establishing strict criteria for concession, requirement of clear counterparts from beneficiaries and periodic review of incentives based on empirical evidence. In Brazil, some state and municipal initiatives have also sought to advance in this direction, through the digitalization of tax data, the institution of monitoring boards and the linking of incentives to performance targets socioeconomic.

## 8. METHOD ADOPTED

This research is characterized as qualitative, exploratory and bibliographical, aiming to analyze, in an integrated legal and economic manner, the tax incentives in relation to the principle of legality. To this end, a legal-social approach was adopted, which allows understand the nuances of tax incentives not only from a normative perspective, but also considering its economic, institutional and social impacts. This approach makes it possible identify how the application of tax incentives affects legal certainty, tax justice and the federative balance, establishing a broader panorama of the effectiveness and limits of these policies.

The choice of qualitative methodology is justified by the fact that it allows for an in-depth analysis of subjective, interpretative and contextual aspects related to the object of study. The research is predominantly bibliographical and documentary, based on the reading and critical analysis of books, scientific articles and recent academic productions, as well as writings by judges, lawyers, professors and experts in the tax area, incorporating the main classical doctrines and contemporary on the subject.

The documentary analysis included the interpretation of the National Tax Code (CTN) and the Federal Constitution of 1988, with emphasis on provisions related to the principle of legality. They were case law decisions, summaries and normative acts will also be examined, with the aim of map the evolution of legal understanding and its practical application in different contexts. This analysis allowed us to identify the points of convergence and divergence between theory and practice in granting tax incentives, contributing to a critical understanding of the topic.

With this methodological set, we sought to develop a critical approach, grounded and multidimensional, capable of supporting the contemporary debate on compatibility between legal certainty, tax justice and economic efficiency. Furthermore, the study aims to provide subsidies for the formulation of more transparent and coherent public policies, which reconcile the interests of the State, taxpayers and sustainable economic development.

## 9. RESULTS AND DISCUSSION

The analysis of the principle of legality in Tax Law, especially in the context of granting of tax incentives, highlights the centrality of this principle as a basis for the

preservation of the Democratic Rule of Law and the protection of taxpayers' rights. requirement of specific law to establish, alter or extinguish taxes, as well as to grant tax benefits, does not represent a mere bureaucratic formality, but rather a constitutional guarantee against the arbitrariness of public power. This requirement ensures that decisions with a direct impact on public finances and economic competition are taken in a transparent manner, democratic and under legislative control.

The 1988 Federal Constitution established a complex but structured tax system on solid foundations of legality, equality, administrative morality and federative balance. The practice of tax warfare, by disregarding the procedures required by complementary legislation and by the jurisprudence of the Supreme Federal Court, disorganizes this system, promoting the legal uncertainty, economic inefficiency, and the fragmentation of the federative pact. Incentives fiscal grants granted without CONFAZ's knowledge and without legal support violate not only the principles constitutional, but also the cooperative logic that should govern relations between entities federative.

From an economic point of view, although tax incentives can work as instruments to stimulate regional development, their effectiveness depends on a series of factors structural measures and a careful assessment of their fiscal and distributive impacts. When poorly planned or granted in an uncoordinated manner, these benefits generate a loss of revenue without sustainable economic counterpart, in addition to distorting competition between companies and states, making it difficult to implement a fair and efficient tax policy.

In this scenario, it becomes essential to strengthen control mechanisms institutional and increase transparency in the granting and maintenance of tax benefits. The performance of the courts of auditors, the Public Prosecutor's Office, the Judiciary and civil society is essential to ensure that tax waivers are justified by legitimate and measurable objectives, and not used as distorted political instruments. Furthermore, the modernization of the system national tax system, through a broad reform that promotes the harmonization of tax rules, is essential to overcome the distortions of the current model and to consolidate federalism cooperative and efficient.

In short, tax legality should not be seen as an obstacle to tax policy. development, but as an indispensable guarantee that this policy is legitimate, effective and constitutionally adequate. The contemporary challenge lies in reconciling the objectives

economic with the necessary rigidity of tax rules, in order to build a fiscal system that promotes justice, development and institutional stability.

## 10. THEORETICAL FRAMEWORK

The discussion on the granting of tax incentives in the Brazilian legal system requires a careful analysis of specialized doctrine, which offers solid foundations on the principle of legality and its constitutional consequences. In this context, renowned authors stand out that contribute to the critical understanding of the subject.

Paulo de Barros Carvalho (2018), in his work *Tax Law Course*, argues that the principle of tax legality is an essential element for the validity of any state act of fiscal nature. The author clarifies that:

“Legality in Tax Law is the basis for the validity of the requirement itself fiscal, and it is essential that all tax exemptions or waivers arise from formal law, according to art. 150, I, of the Federal Constitution.” (CARVALHO, Paulo de Barros. *Law Course Tax*. 29th ed. São Paulo: Saraiva, 2018, p. 228).

This statement corroborates the need for explicit legal support for the granting of tax benefits, in accordance with the provisions of article 150, I, of the Federal Constitution, in addition to reinforcing the arguments presented in this study regarding the requirement for specific legislation to validity of incentives.

Hugo de Brito Machado (2017), in turn, emphasizes the rigidity of the principle of legality in scope of taxation, highlighting that:

“No tax benefit may be validly granted except by law specific, strictly observing the principle of tax legality.”  
(MACHADO, Hugo de Brito. *Tax Law Course*. 38th ed. São Paulo: Malheiros, 2017, p. 102).

Your analysis provides a basis for understanding that benefits granted outside the legal and constitutional parameters – as in the case of incentives not approved by agreements in the CONFAZ – are subject to declaration of unconstitutionality, as the Supreme Court has reiterated Federal Court.

Additionally, Ricardo Lobo Torres (2019), in his work *Treatise on Law Constitutional Tax*, highlights the need to observe due legislative process to ensure federative balance and respect for the law. The author argues:

“Tax waivers must be subject to due legislative process, under penalty of violation of legality and federative balance, pillars of the 1988 Constitution.” (TORRES, Ricardo Lobo. *Treatise on Constitutional Tax Law*. 10th ed. Rio January: Renovar, 2019, p. 443).

Torres' contribution is fundamental to understanding that the disorderly concession of tax benefits not only violate tax regulations, but also compromise harmony federative, which justifies the strict control of these measures by the Judiciary and the bodies of oversight.

Consolidating this understanding, Eduardo Sabbag (2022), in his *Manual de Direito Tax*, offers a precise analysis of the role of constitutional principles in limiting the power to tax and exempt the State. For the author, the principle of legality represents the point of mandatory starting point for any state action in the tax field, including the granting of benefits tax inspectors. He emphasizes that:

“The principle of legality is the starting point for any and all acts of taxation or tax relief, under penalty of nullity of the administrative act.” (SABBAG, Eduardo. *Manual of Tax Law*. 9th ed. São Paulo: Saraiva Educação, 2022, p. 151).

The observation made by Sabbag complements the discussion by reaffirming that, even the benefits tax authorities, in their essence of exemption, must respect the same rigors of legality, under penalty of nullity and consequent liability of the entities involved.

Therefore, the incorporation of these theoretical references strengthens the central argument of this work, by demonstrating that legality, the regular legislative process and the preservation of the pact federative are inseparable elements of the tax incentive policy and must be respected to that such benefits fulfill their economic and social function without violating the Constitution.

## 11. FINAL CONSIDERATIONS

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The analysis of tax incentives in the Brazilian federative context highlights the complexity legal, economic and institutional framework involved in its concession. Although they present themselves as

legitimate public policy instruments, aimed at economic development and the reduction of regional inequalities, tax incentives must be compatible with the principles constitutional and with the requirements of fiscal sustainability of the State. The disorderly use and uncoordinated use of these mechanisms has generated revenue distortions, federative disputes and legal uncertainty, reinforcing the need for regulatory reforms and improvements institutional.

To be legitimate, tax incentives must respect principles such as legality, morality, equality, transparency and efficiency, observing the limits of the federative pact and the budgetary control provided for in the Constitution and the Fiscal Responsibility Law. Incentives granted outside the agreements required by CONFAZ or without an adequate legal basis may be considered unconstitutional, as they violate tax equality and federative balance.

It is essential that the granting of tax incentives be accompanied by careful analysis of the impacts on revenue collection and the sustainability of public finances. The balance between economic stimulus and fiscal responsibility are essential conditions for maintaining services public, state investments and state functioning. Without planning, mechanisms compensation for tax waivers and periodic assessment, incentives may compromise the fiscal solvency and generate chronic dependence of economic sectors on tax subsidies.

Brazil faces the challenge of harmonizing tax incentives with the principles of the order constitutional and with the objectives of national development. The fiscal war, the fragmentation regulations and lack of transparency still hinder the efficient use of this instrument. The construction of a clearer regulatory framework, based on objective criteria, on cooperation between entities federative bodies and the effective performance of control bodies, is essential to guarantee legality and effectiveness of incentives. Structural tax reforms, combined with strengthening governance fiscal, represent an opportunity to transform tax incentives into public policies truly inducing development, equity and economic efficiency.

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