

Back to Back Operation

Operation Back to Back

Alex

Summary

Back to Back can be understood as a financial operation where the Brazilian company buys goods from one country and resells them to a third country, within this scenario, the product does not physically circulate throughout the national territory and does not become a commodity nationalized. This operation is carried out under the command of the Brazilian company, which receives the sales amounts and makes the payment for the purchases. This mechanism, still little used in Brazil is the object of study of this article. The methodology used in elaboration of the same was qualitative research, through bibliographic means. From the use of descriptive and exploratory research, the objective of this study was to analyze the tax impact on *Back to Back operations*. The study demonstrated that the operation studied presents positive results for the companies operating in this modality, such as financial gain, elimination of logistical costs that burden the import and export processes, and especially the impact of the reduction of tax burden compared to a classic foreign trade process.

Keywords: Foreign Trade. *Back to Back*. Taxation.

Abstract

Back to Back can be understood as a financial transaction where the Brazilian company buys merchandise from a country and resells it to a third country, within this scenario, the product does not physically circulate through the national territory and does not become a nationalized commodity. This operation is carried out under the command of the Brazilian company, which receives the values of the sale and makes the payment of the purchases. This mechanism, still little used in Brazil, is the object of study of this article. The methodology used in the elaboration of the same for a qualitative research, by bibliographic means. From the research of descriptive and exploratory resources, the objective of this study was to analyze the tax impact in the Back to Back operations. The study showed that an operation studied positive results for the operating companies of this modality, such as financial gain, elimination of logistical costs that influenced the

processes of import and export, and mainly the impact with a reduction of the tax burden in a classic process of foreign trade.

Keywords: Foreign Trade. Back to Back. Taxation

1 Introduction

The advent of globalization helped form large economic blocs aiming to break down customs borders, combined with advances in technology and of the media means that foreign trade is constantly evolving.

Given this scenario, the increase in the exchange of products between countries generates a growth in competition between companies, which in turn, to remain in the market, have sought mechanisms that enable them to increase their competitiveness.

One of these mechanisms is Back to Back operations, where a Brazilian company buys goods from one country and resells them to a third country, within this scenario, the product does not physically circulate throughout the national territory and therefore does not become a nationalized goods. This type of foreign trade operation is still rare used in Brazil. Given this context, the choice of this theme is justified. In methodology the qualitative research method was used, through bibliographic means.

The present study is, in terms of objectives, a research of characteristics descriptive and exploratory, collecting data on this subject in books, articles and websites.

This article aims to analyze the tax impacts on the aforementioned operation under Brazilian tax legislation, verifying the possibility of reducing logistics and tax costs compared to a traditional import operation and export. This research also aims to clarify particularities of the *Back* mechanism to *Back*, limiting itself to evaluating the operation in its tax and exchange aspect.

The aim is to answer the following question: what are the tax effects on *Back to Back* operations in Brazil?

2 Theoretical Framework

With globalization, trade barriers between companies located in different countries become smaller and smaller. Foreign trade is known as a economic activity regulated by the State, with the aim of improving it to the requirements political-economic aspects of the country (DIAS; RODRIGUES, 2004).

Brazilian foreign trade policy is fundamentally focused on economic development, including export incentives in its lines (of a fiscal, administrative, credit nature, etc.) aiming, through the increase resulting, achieve the availability of foreign currency capable of satisfactorily meeting the imperative of imports, especially with regard to raw materials, inputs basic and capital goods, which are items for maintaining high rates of growth in the Brazilian industrial sector (CARLUCI, 2001).

In view of this, *Back to Back* operations emerge, which is an English expression where the company of a respective country makes a purchase abroad for shipment of goods to another country, without passing them through the customs of the purchasing country.

2.1 Foreign Trade

Silva (2008, p. 18) highlights that “the international negotiation process requires practice and exercise. The new business climate is based on planning, establishing goals and objectives, respecting different customs and other capabilities techniques”. Such capabilities involve knowledge about cultural issues within the scope of negotiation, cover plans for the international panorama that must be applied at each proposed location, creating an uninterrupted environment in operations, based on clarity of the issues discussed and the balance of the commercial relationship.

Brandão, Duzert and Spínola (2010) state that in the collaborative negotiation model, each party offers a point to the opponent and vice versa. It is the game of win-win, which follows a negotiation with mutual gains, that is, there is no point one of the parties wins alone.

This collaboration can be interpreted as the hand-to-hand communication method duo, whose goal is to reach a mutual and successful agreement on needs and divergent concepts, since negotiating means keeping one's word, convincing, rather than use brute force, which requires articulation, knowledge about the participants in this method.

From this, the triangular operation occurs according to needs. specific, as long as the culture of the countries involved and the position between the members who will negotiate.

For operations, proper knowledge of the issue is of vital importance. cultural in target countries of interest, for example, China where the use of the “method

guanxi” becomes necessary, as it deals with commercial relations based on friendship, trust and credibility and thus, its form of application in the operation process triangular shape needs to be thought out wisely to get the benefit from its use. This is extremely valuable due to the history of other negotiations already carried out between Brazilian and Chinese companies.

Given the above, it is essential to already have a commercial affinity with the country of negotiation to carry out a complex operation such as triangulation, since the principle, as in the case of the Chinese, they are slow in taking the necessary action for important processes due to lack of knowledge of how to work with the company proposing the project.

In relation to Europeans, in triangulation, the fact that they stand out be flexible, committed, responsible with meeting deadlines and, competitive for business settlement, as efficiency generates cost. In this sense, for Europeans assume that they have a greater commercial commitment as well as the Brazilian, in order to generate a solid commercial relationship between the parties involved, enabling larger deals to be completed more easily (Kugelmeier, 2010).

In this way, it can be seen that Europeans are more interested in to achieve this type of triangulation, are interested in future negotiations. Situation opposite to what happens with the Chinese, as greater patience is required for completion of the first deal.

2.1.1 Import

Importation is the commercial and fiscal process that consists of bringing in a good, which can be a product or a service, from abroad to the country of reference. The import sometimes it is carried out with the receipt of the goods by the buyer or his representative, abroad, in accordance with the clauses agreed in the purchase contract and sale (LOPEZ; GAMA, 2005).

Importation seeks to fill gaps in the economic structure, collaborating in complementing the products available to the population of a country, or capital goods necessary for companies, also fulfilling the role of modernizing the economy by stipulate competition and allow comparison of processes and products (DIAS; RODRIGUES, 2004). In this sense, Lopez and Gama (2005, p.268) explain that,

For exchange purposes, it could be said that the import represents an outflow of foreign currency, recorded in a specific field of the Balance of Payments, that is, the absence of a remittance of foreign currency, accepted in some operations, constitutes an import without foreign exchange coverage.

2.1.1.1 Taxes levied on Imports

To understand the strong incidence of tax burden on product imports finished goods and inputs, Ashikaga (2005) explains that in the import of foreign goods, there will be a taxable event for transactions related to the Circulation of Goods and provision of interstate and intermunicipal transportation and communication services (ICMS), Import Tax (II), Tax on Industrialized Products (IPI), in addition to the contribution to the Social Integration Program (PIS, import) and the Contribution to Social Security Financing (COFINS, import), established by Law No. 10,865/04.

There are other taxes such as fees and surcharges that affect imports, however, they represent an irrelevant impact on the tax impact of this transaction.

2.1.2 Export

Export can be understood as the act of exchanging goods and services between countries, so that these exchanges meet the needs of the parties involved and in the same way generating foreign exchange for the countries that participate in this activity. The export is fundamental and necessary for all countries. No country in the world can survive in isolation, in the face of a globalized world (VAZQUEZ, 2001).

To start the export process, the company must have three bases parameters: create a competitive corporation, worry about passing on the product in order to intensify competitiveness and analyze the markets involved in the process (MINERVINI, 2008). Thus, the purpose of companies that operate with export is to develop to be competitive in the domestic market, providing a quality product compared to the domestic market which is underdeveloped (SOUZA, 2002).

2.1.2.1 Taxes levied on Exports

Exports do not suffer the same tax intensity as imports, This fact is a result of the government's intention not to tax exports and encourage sale in the foreign market and the entry of foreign currency into the country. According to the legacy of Ashikaga (2005), all exits of goods, products or assets destined for the abroad will enjoy tax benefits related to ICMS, IPI, PIS/PASE and COFINS – Invoicing.

Pegas (2006, p. 339) explains that “the export tax is provided for in the Federal Constitution, art. 153, section II. Due to modern guidelines regarding application of taxes, the export of Brazilian or nationalized products is no longer subject to the application of Export Tax – IE”. However, the author explains that in In practice, the products taxed by Export Tax (IE) are few, and also have a zero rate, according to SECEX (Foreign Trade Secretariat) ordinance No. 15/04.

In view of the above, it is observed that while imports remain strong tax incidence, exports are practically not taxed. The exception is related to Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL) that ends up affecting the result of the sale of the product exported.

2.2 *Back To Back* Operation

To characterize a *Back to Back operation*, the Brazilian company buys a certain product abroad and sells this product to a third country. In this way, the acquisition and delivery of the goods occur abroad, or that is, without touching national territory. The operation is controlled by the Brazilian company, manufacturing country forwards the product to the importing country (CENTRAL BANK OF BRAZIL, 2011). As shown in the figure below:

Figure 1 – Illustrative flowchart of the triangular operation

Source: own authorship.

Back to Back consists of a combined international sales procedure simultaneously or prior to the purchase of the product, which will be the object of sale in a third market, in which the goods will be transported from the selling country to the country buyer (LOPEZ; GAMA, 2005). Under the responsibility of the company located in Brazilian territory. The organization may count on an intermediary agent in the outside that may be responsible for the operation process without attributing to it possession of the goods (CENTRAL BANK OF BRAZIL, 2011).

According to BACEN (2011), the referred transaction is characterized as a export operation as well as import. However, for the Federal Revenue:

“Back to back operations, that is, the purchase and sale of products foreigners, carried out abroad by a company established in Brazil, without the goods physically passing through the territory Brazilian, does not characterize the import or export of goods...” (MINISTRY OF FINANCE 2010).

In this sense, it is verified that there is in fact a conceptual paradigm in what refers to the classification of the aforementioned operation, as there are two Union bodies, which have a distorted conceptualization and classification for the same form of business. What gives room for possible legal challenge, since there is no consensus on conceptualization for the same form of business.



The main benefits analyzed in the *Back to Back operation*, according to Banco do Brasil (2011), are: financial gain with triangulation, considering that the the sale value must be greater than the purchase value, and due to the fact that it does not there is no need to issue the Export Registration (RE), as there is no entry or departure of goods from Brazil.

We can classify *Back to Back* as being an eminently financial, since the legislation governing this operation does not require the recording and issuance of the usual foreign trade documents, such as: Entry Registration Book (LRE), Exit Registration Book (LRS), Digital Tax Recording (EFD), Declaration Import Registration (DI), Export Registration (RE) and Electronic Invoice (NF-e), as the operation is limited to the entry and exit (circulation) of foreign currency.

In contrast, international documents such as the Purchase Agreement and Sale, Proforma Invoice, Commercial Invoice and Bill of Lading are indispensable (TAX, 2012).

2.2.1 Exchange Aspect and Authorization to Operate *Back to Back*

Classified as a financial transaction where there will only be buying and selling of foreign currency (GARCIA, 2009), the *Back to Back* operation is mentioned in the Regulation of International Exchange and Capital Markets (RMCCI) in Chapter 1 of Title I, Item 5, which says:

(...) applies to purchases and sales of foreign currency by individuals or legal entities, resident, domiciled or headquartered in the Country, in a bank authorized to operate in the foreign exchange market, for the purpose of establishing availability abroad and its return, as well as to "back to back" operations.

The request for authorization to operate *Back to Back* is based on a request for authorization to contract export exchange contracts and import (Central Bank of Brazil 2009).

The Brazilian company must inform the financial institution of the request. authorized to operate in foreign exchange, informing the names of companies abroad, both from supplier and buyer; the values and deadlines agreed for receipt and payment; provide copies of commercial documents such as the invoice and

bill of lading and values for contracting exchange contracts
(ZIMMERMANN, 2012).

Given this scenario, Green explains that there will be a foreign exchange contract purchase of foreign currency, relating to payment for the goods to the supplier, and another sale, due to the receipt of the value of the sale of the product to the buyer final. Finally, generating the financial gain that will be given by the difference between the contracts exchange rate for the sale and purchase of the product.

For an exchange contract to be identified as *Back to Back* it is necessary register it with nature code 10447, export contract and 15442 in the case of import (ZIMMERMANN, 2012).

According to Reali's legacy, the rules of the Central Bank of Brazil allow export receipts to be made directly into an overseas account and kept in a bank by the exporter himself. Payment of import through these credits without having to be communicated or authorized by BACEN, therefore the financial value itself does not need to be in transit Brazilian banks.

2.2.2 Deadlines and Intervals in *Back To Back* Operations

The deadlines for receipt and payment should not be more than 180 (one hundred) days and eighty) days from the date of departure abroad, with a maximum interval of 90 days between the date of receipt and the date of payment (CENTRAL BANK OF BRAZIL, 2009).

2.2.3 Operations with *Incoterms*

Back to Back operations may be negotiated with *Incoterms* (Terms International Trade) distinct. *Back to Back* is characterized by the existence of financial gain, and proof of financial gain will be given by difference between the import cost value and the export cost value. If the *Incoterms* are different, the net value (cost value) of the same must always be determined, deducting the expenses included (TRANSAEX COMÉRCIO INTERNATIONAL, 2008).

2.2.4 *Back to Back* in Operations Located in the Same Country

The *Back to Back* operation also allows both buying and selling within the same country (TRANSAEX INTERNATIONAL COMMERCE, 2008). This transaction generates several business combinations, such as, for example, exporting the product from Brazil, add some part abroad and from there finalize the export process to a third country (TRANSAEX INTERNATIONAL COMMERCE, 2008).

In view of the above, the Brazilian company must present a document that prove the departure of the goods from one State and their delivery to another, given that In this situation, no international bill of lading will be issued. (ZIMMERMANN, 2012). It can be analyzed that in the *Back to Back mechanism*, the national entrepreneur, does not necessarily need to acquire a product from a country and sell to another, Buying and selling can take place in the same country.

Given this, it is possible to buy a product in Canada and sell it to another customer in that same country. However, for this type of transaction, it is important also know the legislation of the country with which you are negotiating.

2.3 Tax Treatment

Given the current scenario of growth in the import of products due to low cost combined with the clustered activity of many companies in foreign trade, create new marketing mechanisms. However, the opportunity to export the international products directly to other countries, without the entry of even in Brazil, besides being a little-known operation, it is not clearly defined in Brazilian tax legislation.

Regarding the obligation to issue an invoice, the Brazilian Federal Revenue Service, through Consultation Solution No. 49 of February 6, 2007, positioned itself for the non-obligation to issue in purchase and sale transactions carried out abroad, in which there is no physical transfer of goods to Brazilian territory (MINISTRY OF FINANCE 2007).

According to Consultation Solution No. 202, of October 16, 2003, of the Secretariat from the Federal Revenue Service on contributions to PIS/Pasep, revenue from *Back to Back* operations It is not considered an export and therefore the exemption from PIS contributions cannot be applied. relating to the export of goods, based on Law No. 5,172, of October 25,

1966, art. 111; combined with Provisional Measure No. 2,158-35, of August 24, 2001, art. 14, items II and IX, and § 1 (MINISTRY OF FINANCE, 2003).

The same understanding is held by the Federal Revenue Service regarding the Contribution for Social Security Financing – COFINS, based on Law No. 5,172, of 25 October 1966, art. 111; combined with Provisional Measure No. 2,158-35, of August 24, 2001, art. 14, items II and IX (MINISTRY OF FINANCE, 2003). Various actions by companies that use *Back to Back* have been put on the agenda, by lack of understanding between the Federal Revenue Service and the Central Bank of Brazil (MINISTRY OF FINANCE, 2003).

According to Nasrallah, *Back to Back*, there is no specific regulation for *Back to Back* operations, which ends up generating doubts and discussions regarding their legal nature; whether this mechanism should be treated as import and export and their respective tax consequences (NASRALLAH, 2012).

The tax burden that normally applies to imports, such as the Import Tax, Import (II), Tax on Industrialized Products (IPI), Tax on Circulation of Goods (ICMS), Social Integration Program (PIS) and Contribution to the Social Security Financing (COFINS) are exempted in the referred operation (Reali 2012).

Reali (2012) concludes that the operation under study only generates taxes and contributions levied on sales and/or results, such as Income Tax (IRPJ), the Social Contribution on Net Income (CSLL) and, by understanding of the Federal Revenue, PIS and COFINS, which are levied according to the regime to which the taxpayer has chosen, either Real Profit or Presumed Profit.

2.3.1 PIS and Cofins on Earned Revenue

PIS/PASEP is a contribution that aims to finance insurance, unemployment and annual salary bonus. Its generating fact is the monthly turnover, considering all revenues earned by legal entities. Cofins is about a contribution to the financing of Social Security and aims to financing of health, social security and social assistance. Its generating event is also monthly turnover, thus considering the total revenue earned by people legal.



According to Consultation Solution No. 202, of October 16, 2003, of the Federal Revenue Service, with regard to PIS/Pasep, the revenue from *Back to Back* operations do not characterize export. Therefore, it cannot be applied to exemption from the PIS contribution relating to the export of goods, based on legal device Law No. 5,172 of October 25, 1966, art. 111; Provisional Measure No. 2,158-35, of August 24, 2001, art. 14, items II and IX, and § 1 (MINISTRY OF FARM, 2003).

The Federal Revenue Service adopted the same position for COFINS, in relation to Law No. 5,172 of October 25, 1966, art. 111; Provisional Measure No. 2,158-35 of August 24, 2001, art. 14, items II and IX (MINISTRY OF FINANCE, 2003). Therefore if it does not characterize export, the application of exemption from PIS and Cofins related to it is not applicable the export of goods.

There are many companies that question the incidence of Pis and Cofins on sales revenue, since the export operation (our emphasis) is exempt from both taxes and, on the grounds that there is an inflow of foreign currency, the operations should be relieved. The Federal Revenue's solution No. 398/2010 is enlightening regarding these questions from *Back to Back operating companies*:

(...) regarding the purchase, there is no incidence of the contribution to PIS/Pasep, provided for import, regarding the sale, there is no exemption from the same contribution, referring to export. The basis for calculating the contribution to PIS/Pasep is the revenue that corresponds to the total revenue earned by the legal entity. Therefore, the calculation basis for the aforementioned contribution in back-to-back operations corresponds to the value of the commercial invoice issued to the purchaser of the goods, domiciled abroad. (MINISTRY OF FINANCE 2010).

Revenue from a back-to-back transaction, i.e., the purchase and sale of foreign products carried out abroad by a company established in Brazil, without the goods physically transiting through Brazilian territory, does not constitute an export transaction and, therefore, is not covered by the non-incidence of Cofins provided for in art. 6 of Law No. 10.833 of 2003. CALCULATION BASIS. The calculation basis for Cofins is the revenue that corresponds to the total revenue earned by the legal entity, regardless of its name or accounting classification. Therefore, the calculation basis for Cofins in a back-to-back transaction corresponds to the value of the commercial invoice issued to the actual purchaser (legal entity domiciled abroad). (MINISTRY OF FINANCE 2008).

However, when analyzing the mechanism of this operation, it can be understood that in first stage of the operation: purchase of products abroad, does not fall within the concept import. In other words, it cannot be thought that in this operation the goods would be nationalized, since it was not imported. Therefore, the second stage: sale of the product in abroad, it cannot be understood as export either, the merchandise is not national, was not produced or manufactured using national inputs and labor.

In short, in the export process, there must be a destination abroad of national or nationalized goods. This does not occur in *Back to Back* operations and, Since there is no export, the tax benefit is in fact non-existent.

2.3.2 Transfer Pricing

Transfer pricing serves to identify the controls to which the commercial or financial operations carried out between related parties (which occurs when one corporation has the power to control or have significant influence over another company, which may be controlled or affiliated), headquartered in different tax jurisdictions or when one of the parties is based in a tax haven.

Given the peculiar circumstances existing in the operations carried out between these people, the price charged in these operations may be artificially stipulated and, consequently, differ from the market price negotiated by independent companies, under similar conditions (MINISTRY OF FINANCE, 2009).

In 2012, the *Back to Back* operation became subject to pricing legislation transfer according to IN RFB 1.312/12:

Art. 37. Back-to-back transactions are subject to the application of transfer pricing legislation when:

I - acquisition or sale of assets to a related person resident or domiciled abroad; or

II - acquisition or sale of assets to a person resident or domiciled in a country or dependency with favorable taxation, or benefiting from a privileged tax regime, even if not linked.

§ 1º For the purposes of the provisions of the caput, back-to-back transactions are those in which the purchase and sale of products occur without these products actually entering or leaving Brazil.

product is purchased from a country abroad and sold to a third country, without the goods transiting through Brazilian territory.

§ 2 It must be demonstrated that the profit margin of the entire transaction, carried out between related parties, is consistent with the margin practiced in operations carried out with independent legal entities.

§ 3º 2 (two) parameter prices must be determined for the purchase transaction and the sale transaction, observing the legal restrictions regarding the use of each calculation method.

In contrast, Law No. 9,430/96, hierarchically superior to the aforementioned above, determines that only those are subject to transfer pricing control transactions with related persons in export operations:

Art. 19. Revenues earned from transactions carried out with a related person are subject to arbitration when the average sales price of goods, services or rights, in exports carried out during the respective period of calculation of the tax base. income tax, is less than ninety percent of the average price charged for the sale of the same goods, services or rights, in the Brazilian market, during the same period, under similar payment conditions.

As analyzed in the previous chapter of this article, the Federal Revenue Service itself classifies that *Back to Back* operations do not qualify as export. Therefore, given of this panorama, could not be subject to transfer pricing, arbitrating the price minimum in disposal operations by a Brazilian company.

Export transfer prices use the average price as a parameter practiced in the Brazilian market, and in *Back to Back* operations the goods are not travel in the country. In fact, it is inconsistent to impose the average selling price of goods in the Brazilian market.

Article 18 of Law No. 9,430/96 does not restrict its application to operations of import, including acquisitions. In this way, it reaches any acquisitions in the exterior:

Art. 18. Costs, expenses and charges relating to goods, services and rights, as set out in import or acquisition documents, in transactions carried out with a related person, will only be deductible in determining real profit up to the amount that does not exceed the price determined by one of the following methods.

In view of the above in Article 18, it can be admitted that the rules on prices of transfer apply to *Back to Back* operations related only to the part of the business related to the purchase of goods abroad. However, it would not be properly applied as a whole, being correctly attributable to only part of this operation.

In short, transfer pricing controls have no applicability. for *Back to Back* operations , mainly because such controls were not developed for this purpose.

3 Research Methodology and Data

The methodology adopted in the preparation of this article was qualitative research, by bibliographic means.

The present study is, in terms of objectives, a research of characteristics descriptive and exploratory, collecting data on this subject in books, articles and *websites*.

Using descriptive research, this article aims to demonstrate the main theoretical aspects that underpin the topic in question. In this sense, Beuren (2003) explains that,

Descriptive research is an intermediate study between exploratory and explanatory research, that is, it is not as preliminary as the former, nor as in-depth as the latter. In this context, describing means identifying, reporting, comparing, among other aspects.

This study aims to identify the main aspects related to the operation *Back to Back* anchored in foreign trade and its tax impacts.

4 Advantages

Given the line of reasoning outlined in this article, the benefits that the *Back to Back* mechanism offers, tax costs are the main advantages of operation, in addition to reducing the logistical costs that would be incurred in exporting the goods.

Lunardi (2011) explains that the *Back to Back* operation is an alternative relatively new to many traders and should be better explored by them professionals, issues such as a less bureaucratic marketing process, lack of logistics circulation in Brazil and economy such as labor, inputs, and taxes are relevant evidence of the advantages.

Figure 2 – Illustrative control of the main taxes applicable when comparing the Import and Export modalities compared to the *Back to Back operation*:

Tribute	Generating Fact	Import to the	Export to the	<i>Back to Back</i>
II	Nationalization of goods Customs	Yes	No	No
ICMS	clearance of goods or assets imported from abroad Entry of foreign goods into national	Yes	No	No
PIS / Cofins (Import)	territory, in the case of import of goods; or payment credit, delivery, employment or remittance of amounts to residents or domiciled abroad as consideration for services rendered, in the case of import of services.	Yes	No	No
Pis / Cofins (Billing the)	Monthly revenue, considering all revenue earned by legal entities.	No	No	Yes
IPI	In imports: customs clearance of the products of foreign origin; In domestic operations: the departure of products from an industrial establishment, or one similar to an industrial establishment.	Yes	No	No
IE	The departure of a national or nationalized product from the national territory.	No	Yes	No

Source: own authorship

Zimmermann (2012) highlights financial gain as being one of the main advantages offered in this operation, since the sale value is necessarily greater than the purchase price.

The *Back to Back* structure also takes into account the possibility of generating other business combinations, such as, for example, exporting goods from Brazil, add some part to the product abroad and from there complete the export process

to a third country. The operation does not need to be tied to a triangular structure, where the Brazilian company buys goods from one country and sells them to another. Buy from the supplier in a country and sell to the final recipient in that same country, of course complying with local legislation (SEM FRONTEIRA, 2008).

5 Conclusion

The present study sought to analyze an operation that has gained evidence as an innovative alternative within the foreign trade scenario, in this sense, it is necessary to improve Brazilian tax legislation with regard to *Back to Back* operation .

The objective of this article was to analyze the tax impact on *Back to operations Back*. Thus, it was found that the operation studied provides many advantages, such as such as financial gain, elimination of logistical costs and mainly benefits with the reduction of the tax burden compared to a classic import process and export.

However, through this study, it was found that there is no regulation specific to this operation, which creates doubts on the part of the institutions that operate within this modality, opening room for discussions with the Revenue Secretariat Federal regarding its tax obligations. As highlighted by Sem Fronteiras (2008), this operation are free to practice, but, due to the fact that the exchange regulations do not mention the operation in detail, there are obstacles to its commercial realization.

The Federal Revenue Service creates a paradigm for the mechanism in discussion, requires PIS and Cofins on revenues from *Back to Back* operations precisely because it does not consider them export earnings, but qualifies them as exports to transfer pricing purposes.

In short, the tax discussion on *Back to Back* operations goes beyond its classification as to whether it is an export process or not. As it is a mechanism with own characteristics, needs to be properly equated in tax legislation Brazilian and transfer pricing controls go beyond this purpose.

It is essential for Brazilian tax legislation to move forward in conjunction with evolution of innovative mechanisms of foreign trade. In view of this, the operation in study should be understood as eligible for incentives and tax benefits, as it raises

currencies for Brazil, making it necessary to change or create legal norms that provide, as in exports, incentives for this operation.

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