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The importance of tax planning in Brazil

The importance of tax planning in Brazil

Renata Carvalho of Light

SUMMARY

This article addresses the importance of tax planning in Brazil, a country with a complex, unstable and historically rigid tax system. The main objective is to explore the fundamental concepts, the main strategies and the relevance of the correct application of tax planning for companies and individuals. The work uses research methodology bibliographical in reliable sources such as legislation, jurisprudence, doctrine and articles recent academics. Basic concepts such as tax and its types are defined, in addition to address the difference between tax avoidance, evasion and tax evasion. Various tax avoidance strategies are presented. legal tax planning. The steps of successful tax planning are detailed, from the analysis of the current scenario to implementation and monitoring. Also the three types of tax planning are explored: operational, strategic and tactical. Conclusion know that tax planning is an essential tool for financial management and success business in Brazil, providing a legal reduction in the tax burden.

Keywords: Tax Planning. Brazilian Tax System. Tax Avoidance. Tax Strategies.

Abstract

This article addresses the importance of tax planning in Brazil, a country with a complex, unstable, and historically rigid tax system. The main objective is to explore the fundamental concepts, main strategies, and relevance of the correct application of tax planning for companies and individuals. The work uses a bibliographic research methodology in reliable sources such as legislation, case law, doctrine, and recent academic articles. Basic concepts such as taxes and their types are defined, in addition to addressing the difference between tax avoidance, evasion, and tax evasion. Several legal tax planning strategies are presented. The steps of successful rate planning are detailed, from the analysis of the current scenario to implementation and monitoring. The three types of tax planning are also explored: operational, strategic, and tactics. It is concluded that tax planning is an essential tool for financial management and business success in Brazil, providing a legal reduction in the tax burden.

Keywords: Tax Planning. Brazilian Tax System. Tax Avoidance. Tax Strategies.

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Introduction

The Brazilian tax system is an ordered set of tax rules, comprising constitutional provisions (structural rules); national standards, more specifically the provisions contained in article 146 of the Constitution of the Republic; rules relating to the exercise of tax authority (specific legislation for each entity) – Federal Union, States, Federal District and Municipalities) and, finally, administrative legislation, as provided for in article 96 of the National Tax Code – CTN.

In addition to the entire legislative framework, doctrine and jurisprudence complement the studies and application of tax law rules, since, while the former presents relevant studies on the evolution of this branch of law, this is formed by the set of judicial decisions that seek to fill gaps and omissions on certain topics or issues tax.

Brazil has a historically rigid and complex tax system, in addition to unstable, with several changes occurring throughout the constitutional evolution, since its emergence in the first Imperial Constitution, of 1824, which brought a tax system ordered and established the principle of annuality, up to the present day when we experience the implementation of the Tax Reform, established by Constitutional Amendment No. 132/2023, living, in this way, in constant modeling, constantly changing.

We live in a country of continental nature, with many inhabitants and situations very diverse, such as large economic differences, specific needs, discrepancy cultural, with poles of overdevelopment and underdevelopment.

Given the complexity of our tax system and so many diversities, tax planning in Brazil is an essential tool for companies and individuals who seek to optimize their tax burden in a legal manner.

Regarding tax planning, Latorraca advises that:

Tax Planning is usually referred to as the business activity that, developing in a strictly preventive manner, it projects the acts and facts administrative with the aim of informing the tax burdens in each one of the legal options available. The object of tax planning is ultimately

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analysis, tax economics. Comparing the various legal options, the administrator obviously seeks to guide his steps in such a way as to avoid, whenever possible, the most onerous procedure from a tax point of view. (LATORRACA, 2000, p. 37).

It consists of a set of strategies and practices that aim to reduce payment of taxes, always in accordance with current legislation. Its objective is to improve the quality of decisions made by contributing entrepreneurs, allowing a qualified analysis of the fiscal risks and tax savings options presented, in addition to generating the awareness of the importance of compliance with tax legislation.

In a complex and dynamic fiscal scenario like Brazil's, where laws tax rules are frequently changed, tax planning becomes crucial. It allows not not only cost reduction, but also the prevention of tax risks, such as fines and enforcement of fines by tax authorities.

In this context, the present work aims to explore the concepts fundamentals of tax planning, its main strategies and the importance of its correct application.

The methodology used in this article involves bibliographic research in sources reliable, such as legislation, case law, doctrine and recent academic articles.

Basic concepts and the importance of tax planning

The Tax Code defined, in its art. 3, the tax as:

"Art. 3. Tax is any compulsory pecuniary payment, in currency or whose value can be expressed therein, which does not constitute a sanction for an unlawful act, established by law and charged through fully linked administrative activity".

The Brazilian tax system, established in the Federal Constitution, established the following tax types: taxes, fees, improvement contributions1 , compulsory loans2 and special contributions3 .

Until the Tax Reform is fully implemented, we have, in Brazil, taxes under the jurisdiction of the Union, States, Federal District and Municipalities.

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The Union establishes taxes on imports (II); exports (IE); income and proceeds of any nature (IR); industrialized products (IPI); operations of credit, exchange and insurance, or relating to securities or financial instruments (IOF); property rural territorial (ITR); large fortunes (IGF); production, extraction, marketing or import of goods and services that are harmful to health or the environment, in accordance with the law complementary (CF, art. 153).

It is the responsibility of the States and the Federal District, in accordance with art. 155, of the Federal Constitution, the institution of taxes on transmissions *due to death* and donations, any goods or rights (ITCMD); operations relating to the circulation of goods and on provision of interstate and intermunicipal transport and communication services, even if operations and services begin abroad (ICMS); vehicle ownership automotive (IPVA).

Finally, by express determination of art. 156 of the Constitution of the Republic, it is to Municipalities, to establish taxes on urban property and land (IPTU); "inter vivos" transfer, for any reason, by onerous act, of real estate, by nature or physical accession, and real rights over real estate, except for guarantees, as well as assignment of rights to its acquisition (ITBI); and services of any nature (ISSQN).

For tax planning purposes, the main taxes for activities business can be divided on profit (Corporate Income Tax - IRPJ and the Social Contribution on Net Profit - CSLL), revenue (Contribution to the Social Security Financing - COFINS and Contribution to the Integration Program Social - PIS), products (Tax on Products

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[1]CF, Art. 145. The Union, the States, the Federal District and the Municipalities may establish the following taxes: I - taxes;
II - fees, due to the exercise of police powers or for the effective or potential use of specific public services and divisible, provided to the taxpayer or made available to him;
III - contribution for improvement, resulting from public works.

[2]CF, Art. 148. The Union, through complementary law, may establish compulsory loans:
I - to cover extraordinary expenses arising from public calamity, external war or its imminence;
II - in the case of public investment of an urgent nature and of relevant national interest, in accordance with the provisions of art. 150, III, "b".

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[3] CF, Art. 149. It is the exclusive responsibility of the Union to establish social contributions, intervention in the economic domain and interest of professional or economic categories, as an instrument of their performance in their respective areas, observing the provided for in articles 146, III, and 150, I and III, and without prejudice to the provisions of art. 195, § 6, regarding the contributions referred to the device.

Industrialized - IPI and Tax on operations related to the circulation of goods and on provision of interstate and intermunicipal transport and communication services, even if operations and services begin abroad - ICMS) and services (Tax on Services of Any Nature).

Tax planning is done through the use of legal systems that allow the company to be structured in such a way as to reduce the costs of the enterprise, including of taxes.

Regarding the topic, the doctrine brings important concepts, such as definitions and differences between tax avoidance, evasion and tax evasion, known as three types other than reducing the tax burden of a taxpayer, whether an individual or a legal entity, producing savings in the payment of taxes.

> *"Tax avoidance is the technique used legally to collect less taxes. Tax evasion is the atypical way of trying to save taxes through means that seek to disguise the elements that would constitute the fact generator of the tax. Tax evasion is the illegal technique of paying less taxes4."*

Lawful tax planning encompasses tax avoidance, since it seeks to reduce of the tax burden using legal strategies, planning and structuring the business of in order to minimize taxes, within the limits of the law. No legal act should be carried out simulated and not fraudulent.

Within the law, with the practice of tax evasion, through planning adequate tax system, strategies such as corporate reorganizations, choice of appropriate and, consequently, more advantageous tax regimes, in order to minimize the tax burden in a lawful manner.

In an intermediate position and on a fine line, there is the so-called elusion. tax, which uses practices that are on the border between legality and illegality, as a way to circumvent tax legislation through the use of interpretations of the law.

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in order to reduce or avoid paying taxes.

In tax evasion, atypical legal forms are used to avoid the emergence of tax obligation. It is not clearly illegal, but it can be questioned by the IRS for abuse of legal forms.

The fight against abusive tax avoidance or tax evasion is the result of the idea that taxpayer has broad freedom to plan their business, in search of savings taxes to be paid, as long as they do not commit abuse of rights or commit illegal acts.

To curb this practice, in Brazil, since the 1980s,

[4] https://www.estrategiaconcursos.com.br/blog/planejamento-tributario-e-elisao-tax/?utm_source=google&utm_medium=cpc&utm_campaign=ec-ge-vd-pmax-assinaturavitalicia-semesp- 310325-vitalicia&gad_source=1&gbraid=0AAAADpTrcdNBkNEuStzOuhd0yt4eaUQx&gclid=Cj0KCQjwlMfABhCWARIsADGXdy-z8DW9qxLC59CLzo7VCygMbjjDU-NHWqe7jukEhyQPZ8qlioDUnSEaAuoiEALw_wcB

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specific anti-avoidance rules were introduced into income tax legislation, such as Law No. 7,450/1985 and Law No. 9,430/1996. However, in 2001, the general anti-avoidance rule emerged, provided for in the sole paragraph of art. 116 of the National Tax Code:

> *"Sole paragraph. The administrative authority may disregard acts or legal transactions carried out with the purpose of concealing the occurrence of the fact generator of the tax or the nature of the constituent elements of the obligation tax, observing the procedures to be established in ordinary law".*

This is a rule that combats the abuse of rights in all its forms, such as fraud of the law, abuse of form, abuse of business intention and abuse of use of legal personality of the company.

The introduction of the anti-avoidance clause into the Brazilian legal system, despite of other legislation, is the result of the application of the value of legal certainty together with that of justice. While legal certainty is revealed by the certainty of applicability of the rules, effected by the principle of legality, within the perspective that the tax obligation is not result of the will of the parties and, for this reason, it is not lawful for the taxpayer to commit an act economic, identified by the legislator as an indicator of contributory capacity, to be absent the obligation to make payment of the tax through abuse in the exercise of their right.

Tax evasion, also known as an illegal tax burden reduction technique, tax is the practice used to suppress or reduce taxes through the use of means fraudulent or illicit, constituting one of the crimes against the tax order provided for in arts. 1 and 2, of Law No. 8,137/90.

Avoidance, elusion and evasion are practices used to reduce the burden tax, however, while avoidance uses legal methods to reduce the tax burden, involving tax planning and business structuring in order to minimize incidence of taxes within the limits of the law, the evasion is in a borderline situation, with the use of dubious practices that may give rise to the interpretation of the inspection as being illegal and, finally, evasion, is the use of illegal methods for the reduction or suppression of taxes, configuring tax crimes.

The key difference found between these three ways of seeking to reduce taxes is legality and understanding the issues surrounding it is essential to avoid risks and act with the security that should always be sought in tax planning.

Main tax planning strategies in Brazil

There are several strategies that can be adopted for planning purposes tax in Brazil, with the capacity to achieve, within the law, the reduction of the tax burden intended tax.

The main tax planning strategies in Brazil can be listed as follows:

- Choice of the most appropriate tax regime: it is up to the taxpayer to choose the tax regime to be adopted, choosing, within those made available by our legislation, simple national, presumed profit or real profit, the one that best fits the profile of the company, considering revenue, expenses and activities carried out.

- Taking advantage of tax benefits: correct analysis and interpretation of current tax legislation, in order to identify and use tax incentives and benefits offered by federal, state and municipal laws, thus obtaining a tax burden reduced.

- Tax credit management: monitor the acquisition of tax credits, in order to use them to offset future debts or request refunds due, avoiding, in this way, payments higher than those actually due are made.

- Payroll optimization: plan the company's payroll considering the legal provision of social and labor charges, seeking ways to reduce such costs within the law.

- Continuous analysis and review of operations: constantly monitor the company operations to identify tax savings opportunities and adjust the planning as needed.

- Investing in long-term assets: assessing the tax benefits of investing in long-term assets and consider depreciation to reduce the tax base.

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- Corporate income tax planning: analyze and plan the moment ideal for making tax payments, considering deductions and compensations allowed.

- Implementation of tax management systems: use *software* and systems reliable management to automate the company's tax processes, monitor deadlines and ensure compliance with tax legislation.

- Constant review and update: keep up to date with frequent changes in tax legislation to adjust tax planning and avoid tax risks.

In some situations, in order to avoid disregarding acts or business legal practices practiced, as well as the failure to conceal the occurrence of the taxable event or the nature of the constituent elements of the tax obligation, it is necessary to demonstration of the business purpose.

Derived from North American law, the concept of business purpose is intrinsically linked to the demonstration of the economic basis of legal acts or transactions, in order to demonstrate that, in addition to tax savings, the aim is also to seek a benefit economical for the company or corporation.

The business purpose is characterized by the assessment, in the specific case, of the need demonstration of the economic objectives sought by the choice of a particular business legal, as long as this option is not based on a cause exclusively linked to tax savings.

In Brazil, we do not have specific legislation that provides for the disregard of tax planning structure when the business purpose is not demonstrated.

Often, the absence of a business motive will be irrelevant, since, in In practice, when there is a disqualification of tax planning, this is done by demonstrating of previous fraudulent practice, such as the use of intermediaries, the creation of shell companies and, in these cases, the absence of a business purpose becomes a secondary argument.

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On the other hand, there are often other extra-tax reasons that justify the restructuring of the company, such as changing location, with a reduction in the value of rent; hiring employees at a lower cost, and the tax reduction achieved due to the reduction of other business costs targeted in tax planning.

Steps of good tax planning

As with any planning, in tax planning it is also necessary that some steps are followed to ensure the best result. These are steps to be followed in a successful tax planning:

- Analysis: the first step to be followed in tax planning is the study of the current scenario. It is one of the most important phases, as it is the right time to gather information and fully understand what objectives and processes are being carried out within the company and its positioning in the market. At this point, the tax regime in which the company is classified must be identified, current revenue, revenue and operating expense forecast, services, inventory information, payroll payment, profit margin, number of partners, company size and financial situation.

- Limitation: identification of the objectives that you intend to achieve through the tax planning, mainly financial. At this stage it is necessary to identification of the company's real need.

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- Preparation: proposal of the action plan, of the new scenario that is intended to be implemented in the short, medium and long term. It is time to think about how to obtain new ways to make a profit, not only by reducing the tax burden, but by creating strategies to that the company achieves its desired objectives.

- Projection: identify, according to the results of the study of the current scenario, which the necessary changes to be implemented.

- Test: exposure of possible risks. Assessment of the risks that will be faced from the suggested changes in tax planning.

- Negotiation: check the feasibility of changes. Before executing the tax planning, it is necessary that all sectors of the company are aligned and aware of new practices and adaptations.

- Implementation: adoption of the proposed scenario, with the adoption of changes suggested.

Types of tax planning

The three types of tax planning most used in Brazil are: operational, strategic and tactical.

Operational tax planning involves the overall assessment of the company to manage assets and/or liabilities in order to bear the correct tax burden. Most used to seek results to be achieved in the short term.

It involves adjustments to the company's daily operations to reduce the tax burden, such as cost optimization, supplier selection and facility location. It includes the correction of previous statements through spontaneous reporting before a process inspection, the correct application of tax legislation, the choice between administrative measures and judicial, taxation regime, compensation of taxes paid in excess and access to benefits and tax incentives.

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Strategic tax planning involves the use of tax techniques reorganization of company structures, such as mergers, acquisitions, corporate restructuring, all with the aim of maximizing tax benefits.

Its objective is to project the future of the business, the purposes are defined thinking about the long-term benefits for the company and contributes to defining its vision, mission and values. It must consider internal and external factors for its preparation, thinking in the best allocation of resources in a way that results in benefits for the business and thus be able to adopt methods strategic to implement the targeted changes.

Tactical tax planning refers to decisions to be made regarding commercial transactions, investments and financing to minimize taxation. It focuses in the medium term and maintains the company's global vision.

It is through tactical planning that questions of how actions will be carried out are addressed. implemented and the strategies that will be necessary in each sector to achieve the general objectives of the company.

Final considerations

In the Brazilian context, given the complexity and instability of the tax system, tax planning is an essential tool for companies and individuals, as allows the legal reduction of the tax burden, the optimization of cash flow, the improvement of competitiveness and compliance with the law. The analysis and implementation of strategies Tax planning must be done with caution, always seeking legality and avoiding practices such as tax evasion and avoidance.

To implement effective tax planning, it is necessary to have a in-depth knowledge of tax legislation, constant monitoring of changes and a detailed analysis of the company's financial and operational situation.

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In short, tax planning, when carried out ethically and legally, is a powerful tool for financial management and business success in Brazil. It not only reduces costs, but also provides legal security and financial predictability, essential elements for the sustainability and growth of any business.

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