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**“A MODERN VISION OF THE TAX ADMINISTRATION”**

**TOPIC 2**

**STRATEGIES FOR PROMOTING COMPLIANCE, THE “SUBJECTIVE BENEFIT”  
IN THE TAX ADMINISTRATIONS**

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Portugal**

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## TOPIC 2: STRATEGIES FOR PROMOTING COMPLIANCE, THE “SUBJECTIVE BENEFIT” IN THE TAX ADMINISTRATIONS

### THE PRINCIPLE OF TAX EQUALITY AND THE POSITIVE DISCRIMINATION AGAINST TAXPAYERS

«Civilization is the reason for equality»

CAMILO CASTELO BRANCO<sup>1</sup>

#### 1) INTRODUCTION

All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7 of the Universal Declaration on Human Rights).

Equality is not an island or oasis, and it should be related to other principles, having to be focused in the global context of community values.

«*The first equality is justice*», to paraphrase VICTOR HUGO, a renowned French writer and poet from the 19th century. This is why this foremost legal principle of equality leads to treat as equal what is equal and as different what is different.

All citizens have the same social dignity and are equal before the law (Article 13, paragraph 1 of the Portuguese Constitution).

This is why our Basic Law is not neutral; it deems this principle as one of the basic pillars of the State of Law.

Meanwhile, the Portuguese legal tax system followed this fundamental principle of the State of Law as it outlines that the Tax Administration exercises its duties according to the principle of equality (Article 55 of the General Tax Law).

By giving a different treatment to these different realities – an abiding taxpayer and an evader – the Tax Administration is acting with a sense of *equality* and *justice*. These two principles are like two lines of action that guide us, but that necessarily must always go hand in hand. At the end of the road, we found a destination: *fiscal equality*.

This *equality* applies to an existing rule on a specific situation, adhering to the principles of justice and equality.

*To discriminate* means to favor or harm somebody in relation to someone else.

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<sup>1</sup> Portuguese writer from the 19th century (1825-1890).

To discriminate *positively* (affirmative behavior) means to favor someone who was at a disadvantage in order to reach a point of equilibrium. With this point of equilibrium, the goal is not to favor anyone, but to seek an egalitarian and truly fair society, making compliance a better example, because legal equality does not mean natural or naturalistic equality.

This is why at par with the principle of equality understood in a *negative* sense, meaning a prohibition of discrimination, it must be approached, above all, in a *positive* perspective; in other words, equal treatment to equal situations and unequal treatment to unequal situations.

## **2) FISCAL SECRECY**

Tax administration leaders, officials, and agents are obligated to keep secrecy on the data collected on the tax situation of taxpayers and elements of a personal nature obtained in the procedures, particularly aspects of professional confidentiality or any other obligation dealing with legally regulated secrecy (Article 64, paragraph 1 of the General Tax Law).

The principle of confidentiality subordinates tax leaders, officials, and agents regarding the logic and necessary counterpoint of the duty of reciprocal cooperation between the Tax Administration and Taxpayers (Article 59, paragraph 1 of the General Tax Law).

The legislation expressly outlines the criminal aspects of the principle of confidentiality of tax relations as it states that those officials who, without being duly authorized, disclose secrets that they learned or that were entrusted to them in the exercise of their duties or as a result of them, with the intention of obtaining for themselves or for others an illegitimate benefit or of harming public interests, the social security system, or third parties, shall be punished with up to three years in prison and a fine of up to 360 days (Article 92, paragraph 2 of the RGIT).

Taxpayers can only be led to comply with their additional obligations stipulated by the law and to provide the clarifications the Tax Administration asks of them regarding their tax situations, as well as the economic relations they maintain with third parties, beginning with the solid guarantee that the Tax Administration will keep the necessary secrecy of the facts it comes to learn.

In short, fiscal secrecy provides the necessary counterpoint to the duty of cooperation on the part of taxpayers.

Following the same reasoning, the lack of cooperation cannot help but have consequences, namely refusal to cooperate and opposition to tax inspection actions, which when are not legitimate, make the infringer fall in disciplinary responsibility as a result of it, which is counterproductive and criminal in terms of the law (Article 32, paragraph No. 1 of the Complementary System of Tax Inspection Procedures).

Since the principles of cooperation and confidentiality are connected, as we have seen, violating the former on the part of taxpayers has specific effects on the latter, as part of the current legal system.

Taking the cases of lack of cooperation on the part of taxpayers, which promptly put an end to the duty of secrecy, as examples, the Portuguese Law stipulates the following:

- Publication of a list of taxpayers whose tax situation has not been regularized, namely hierarchical lists in terms of debt amounts once any of the terms legally outlined to use the guarantee has expired or its exemption has already been decided upon (Article 64, paragraphs No. 1 and 5, line a) of the General Tax Law);
- Publication of the executive sale through edicts, advertisements, and postings on Internet, namely including the name or signature of those who were the object of an execution (Article 249, paragraph No. 1 and 5, line b) of the CPPT);
- The summoning via edicts of those who were the object of executions (Article 192, paragraphs No. 2 and 7 of the CPPT), calling the process coercive collection process, when a personal summons is not possible;
- Attachment of the goods of the debtor through notifications to third institutions, namely the debtor's employer;
- Summons to creditors when of any real guarantee right exists is outlined in the warrants (Article 240, paragraph No. 3 of the CPPT);
- Summons to the debtor's unknown creditors (Article 242, paragraph No. 1 of the CPPT).

### **3) BANKING SECRECY**

All people's rights to personal identity, personality development, civil capacities, citizenship, good name and reputation, good image, words, *the reservation of private and family intimacy*, and legal protection against any form of discrimination are hereby recognized (Article 26, paragraph No. 26 of the Portuguese Constitution).

Meanwhile, «*All citizens have the same social dignity and are equal before the law*», according to paragraph No. 1 of Article 13 of the Constitution. This is why in a extreme situation in which there is a conflict between the individual interests of the taxpayer (infringer) and the basic duty of paying taxes, the latter prevails naturally, and the banking secrecy must be derogated as an imperative of the principles of fiscal truth, transparency, cooperation, and above all the fundamental right to fiscal efficacy to which abiding taxpayers are entitled.

The Tax Administration is empowered to have access to all types of information or banking documents without consent from the holder of the protected elements:

- Where there are indications of the commission of a crime of a tax-related nature;
- When there are specifically identified facts pointing to a lack of truthfulness on what was declared;
- When the situation outlined in line f) of Article 87 takes place or when the declaration made at the IRS offices significantly deviate, without a justified reason, from the patterns of performance that can reasonably allow manifestations of wealth as evidenced by the passive subject, according to the terms of Article 89 A.

The Tax Administration is still empowered to directly access banking documents in cases when there is refusal to submit them or to authorize them to be consulted:

- When it is a matter of documents supporting the accounting records of passive subjects of IRS or IRC who are the object of organized accounting;
- When the taxpayer usufructs from fiscal benefits or other fiscal systems, having the need to control the respective budgets and only to do so.

From this, it turns out that in the current Portuguese fiscal system, the **basic principle of the impossibility of derogating banking secrecy** prevails, being admitted only in exceptional cases of strong indications of lack of compliance by taxpayers; in other words, in cases of serious violations of the relationship of cooperation between them and the Tax Administration (Article 63B of the General Tax Law).

The lack of due compliance with the legitimate *order or mandate regularly issued* and emanating from the **general tax director** on matters of the **derogation of banking secrecy** is punishable as qualified disobedience, which entails prison terms of up to one year and fines of up to 240 days (Article 90 of the General Tax Infringement System).

The protected legal good must be duly respected by the *public authority, cooperation, and loyalty* expected from taxpayers in the relations with the Tax Administration (Article 59, paragraph No. 4 of the LGT). The tax administration tries to encourage or regulate compliance with tax obligations, particularly legitimate orders or mandates on matters of banking secrecy derogation.

The penalty is aimed at the addressees of the legitimate order or mandate (for instance, credit institutions or financial associations), assuming the existence of earlier communications.

Judging by what has been explained, it is clear that taxpayers are entitled to banking secrecy with constitutional protection (Article 26, paragraph No. 1 of the Constitution).

#### 4) FISCAL BENEFÍTS

Exemptions, rate reductions, deductions from taxable items and taxes, amortizations, accelerated reimbursements, and so on constitute fiscal benefits (Article 2, paragraph No. 2 of the Fiscal Benefits Statutes).

Examples: exemptions on real estate (Article 44 of the Fiscal Benefits Statutes); deductions from collections based upon charges on real estate and new renewable energy equipment or equipment that consumes natural gas in hearths; education and training expenses; health; insurance premiums (Article 82 of the Code of Taxes on Revenues of Individual People), and so on.

This is how abiding taxpayers have at their disposal a vast assortment of fiscal benefits, which shows the tax institution's incentives for good fiscal practices. On the other hand, oversight emerges as a strategic ally with a view to increasing certain political guidelines in the social, cultural, economic, and environmental realms, which we cannot detail.

In the case of permanent or temporary fiscal benefits that depend on the recognition of the Tax Administration, the effects of the administrative action granted end when the passive subject fails to pay any taxes on revenues, expenses, or assets or insists on lack of compliance (Article 14, paragraph No. 5, line a) of the Fiscal Benefits Statutes).

The tax institution established the **cessation of fiscal benefits** in the case of periodic taxes (IRS) by December 31st of the year pertaining to the tax in question as long as after this date, taxpayers regularize their tax situations (Article 14, paragraph No. 7 of the Fiscal benefits Statutes).

These regulations have a teaching scope, encouraging the voluntary payment of taxes.

With a view to fulfilling the objective of the tax institution, the *Fiscal Benefits Control Information System (SICBEF)* was put in motion in September 2007, particularly the component of the control of fiscal benefits of passive subjects of IRS, IRC, and IMI owing fiscal debts.

#### 5) PAYMENT ON TIME (WITH DISCOUNT)

In the free transmissions, if the **Stamp Tax** is ***paid in full*** by the end of the second month following the notification, a **0.5% discount** per month is applied, calculated upon the importance of each one of the items on which the tax is divided in terms of the following number, excluding the first one (Article 45, paragraph No. 2 of the Stamp Tax Code).

This is how the taxpayers who pay on time in relation to those who pay stamp taxes in installments are discriminated against *positively*, encouraging prompt and expeditious compliance with tax obligations.

When taxes exceed € 1,000, it is divided in equal installments, in a maximum of 10 installments and with a minimum € 200 per installment, adding to the first installment the resulting fractions of the rounding up of all installments, as well as the compensatory interests and the IMT that has to be paid in the process. The first installment is due in the second month following the notification, and each one of the remaining installments is due six months after the expiration of the previous installment (Article 45, paragraph No. 3 of the Stamp Tax Code).

## **6) PAYMENT IN INSTALLMENTS (WITHOUT GUARANTEE)**

Decree Law No. 492/88 of December 30th outlines the collection and reimbursements of the Tax on Revenues of Individuals (IRS) and the Tax on Revenues of Collective People (IRC).

Decree Law No. 150/2006 of August 2nd amended Article 34A, whose paragraph No. 1 states that "debts of taxes on revenues of individuals (IRS) and taxes on revenues of collective people (IRC) for less than 2,500 (euros) and 5,000 (euros), respectively, **can be paid in installments before the beginning of the executive process, with the exception of guarantee**, as long as the debtor does not owe any taxes administered by the DGCI, according to the terms of this article."

Meanwhile, once the fiscal execution process is under way, the debtor (the executed person) is summoned, if it applies, to state his legal opposition to the fiscal execution or to request *payment in installments* (Article 196, paragraph No. 1 of the Tax Procedures and Process Code) and make the payments.

The Tax Administration cannot grant moratoriums in the payment of tax obligations, except in those cases expressly outlined in the law (Article 36, paragraph No. 3 of the General Tax Law).

Tax credit is *unavailable*, and it can only be reduced or derogated based upon the principle of equality and tax legality (Article 30, paragraph No. 2 of the General Tax Law).

In case the *guarantee* is not constituted, the executed person, along with the request, must offer a proper **guarantee**, which will consist of a banking guarantee, surety bond, insurance bond, or any other means capable of guaranteeing the credits of the plaintiff (Article 199, paragraph No.1 of the Tax procedures and Processes Code).

The suspension of the execution by virtue of payments in installments shall depend on the proper **guarantee** in terms of the tax laws (Article 52, paragraph No.2 of the General Tax Law).

This is how the tax institution *positively* differentiates taxpayers who requests payments in installments before the beginning of the fiscal execution process (coercive collection) in relation to those who do so at a later time.

## 7) QUANTIFICATION OF PROCEDURAL COSTS

The costs include a *justice surcharge* and the duties (Article 14, paragraph No. 1, line b) of the Tax Process Cost Regulations).

**The justice surcharge on the execution process is reduced by one-quarter** when payment is made before the personal summons or a summons by edict is issued (Article 14, paragraph No.1, line b) of the Tax Process Cost Regulations).

**The justice surcharge is reduced by half** during the execution process when payment is made after the personal summons is issued and within the term to express opposition (Article 14, paragraph No.1, line b) of the Tax Process Cost Regulations).

Once this term expires, the executed person pays the **tax surcharge in full**.

Unless the opposite is determined, tax responsibilities stemming from debts owed by others are seldom *subsidiary* in nature (Article 22, paragraph No. 3 of the General Tax Law).

The subsidiary responsible party (example: social bodies of collective people) is **exempt from a moratorium on interests or costs** if once summoned to comply with the main tax debt, proceeds to make the respective payment within the term to state opposition (Article 23, paragraph No. 5 of the General Tax Law).

This is how the tax institution burdens less those taxpayers who regularize the tax situations faster, keeping the Tax Administration from carrying out potentially more serious coercive actions against taxpayers and avoiding further costs for the Administration (such as attachments, executive sales, and so on).

## 8) DEGREE OF FISCAL PUNISHMENT

Those taxpayers who commit a punishable infringement against an ordinance can benefit from the **right to a reduction in fines** by 25%, 50%, or 75% of the minimum legal amount, according to the petition filed by the agent 30 days after the commission of the infringement or after this term without issuing a notice or at the end of the tax inspection procedure (Article 29 of the General Tax Infringements System).



Once the counter-ordinance process has begun, taxpayers are no longer entitled to a reduction in fines, but if they pay the fines within 10 days after the notification for their defense, they can benefit from the **anticipated payment**; in other words, they pay only a fine equal to the *minimum legal amount* stipulated for the ongoing counter-ordinance, and the *necessary costs shall be reduced in half* (Article 75 of the General Tax Infringements System).

In case that what has been argued here does not proceed, in the legal term or in the set term, the regularization of the tax situation loses the right to the reduction outlined in paragraph No. 1, and the process of counter-ordinance continues for the setting of fines and the collection of the difference (Article 75, paragraph No. 3 of the General Tax Infringements System).

Once the Tax Administration sets a fine, taxpayers shall no longer benefit directly from the reduction in fines or anticipated payment, but they may benefit from **voluntary payment**; in other words, if they pay the fine within 15 days after the notification is issued, a 75% reduction of the fixed amount proceeds, and the fine to be paid cannot be less than the respective minimum amount, without prejudice for the procedural costs (Article 78, paragraph No. 1 of the General Tax Infringements System).

If taxpayers, until a decision is made, fail to *regularize* their tax situations, they lose the right to the reduction referred to in paragraph No. 1, and the process continues with the collection of the reduced fine (Article 78, paragraph No. 4 of the General Tax Infringements System).

The tax institution punishes the deliberate failure to pay the tax installment over € 7,500, deducted according to the terms of the law and which they were obligated to pay, with prison terms of up to 30 days (Article 105 of the General Tax Infractions System).

In case the amount of the unpaid tax exceeds € 50,000, the punishment includes prison terms of up to five years and fines of 240 to 1,200 days for collective people (Article 105, paragraph No. 5 of the General Tax Infringements System).

Meanwhile, the law positively distinguishes those taxpayers who even though do hide tax facts from the Tax Administration ("material truth"), have promptly complied with the filing of tax returns. Based upon this assumption, line b) of Article 105 of the General Tax Infractions System grants an opportunity for these taxpayers to prevent the beginning of fiscal criminal inquiry process if they pay the unpaid taxes and its corresponding interests, as well as the applicable fiscal fines (Article 114, paragraph No. 1 of the General Tax Infringements System).

Regarding those taxpayers who in addition to having failed to pay their taxes also failed to file their corresponding tax returns, the principle of equality imposes the beginning of the fiscal criminal inquiry process, and the behavior may be punishable after over 90 days have elapsed after the legal expiration of the payment of the installment (Article 105, paragraph No. 4, line a) of the General Tax Infringements System).

In view of the current legal system on matters of tax counter-ordinances, it is clear that the tax institution positively values those taxpayers who cooperate with the Tax Administration in the reinstatement of the material truth and the regularization of their tax situations resulting from illegal actions.

## **9) IN THE FUTURE**

This is why we are tempted to enter the *future* era.

An illustrious thinker from the 20th century, AGOSTINHO DA SILVA, when questioned about what he thought about the future, used to say fluently, "*for the future to happen or come, it is not necessary to convince anyone; it will come whether we want it or not, because it already exists.*"

The Portuguese Tax Administration has made persistent efforts in the *fight against fiscal fraud and evasion* as a means to introducing better fiscal equality among citizens and companies.

Nevertheless, without giving up this permanent and absolutely essential principle of our organization, we have the perception that there still lies ahead a long road to travel regarding the *positive differentiation* that prevails, particularly with regard to those taxpayers who promptly and effectively comply with their fiscal obligations, setting their behavior as a teaching and civic model to follow by infringers, and it is up to the Administration to set up and value.

In this environment, the Portuguese Tax Administration is poised to support and encourage compliance with obligations by going out to meet taxpayers themselves, thus providing a large set of support services for voluntary compliance and establishing a rather friendly relationship with citizens and companies.

Communications with taxpayers do not entail mere contacts with those who insist in failing to comply with their fiscal obligations.

In this regard, the Portuguese Tax Administration is about to begin the implementation of an ambitious Strategic Plan for Taxpayer Service Quality, aimed at promoting mutual and permanent interactions even in the duration of the voluntary compliance term with obvious gains in the form of simplicity, efficiency, competitiveness, quickness, and transparency for both taxpayers and the Administration.

One of the objectives is to ***multiply the channels of communications*** by expanding the channels of communications with taxpayers and developing the use of the *Internet or telephones*, in addition to *personal presence*.

In this regard, we foresee the implementation of **messages via SMS**, as well as new **Internet** functions, such as a **personal agenda**, which may contain notices on voluntary term expirations, information on legislative changes, handling of mail messages, and so on.

Acknowledging the advantages of information and communication technologies in the modernization of the Administration, the particular implementation of an **Electronic Financial Service – Site of Finances** – shall enable the promotion of *Internet* as a privileged relational interface between taxpayers and the Administration. The objective is to reach a level of electronic contact above 80% and promoting the *site* of the Tax Directorate General on the *Internet* among taxpayers who traditionally do not use it.

This is how taxpayers shall be able to mutually carry out interactions that are currently done through other services via the Internet

On the other hand, the Tax Administration is going to be able to carry out interaction and inter-operational functions with other public organizations (such as Courts, the Public Prosecutor's Office, Registries, and so on), in addition to private institutions, in the handling of information requests and their respective replies, thus freeing from those tasks resources from Central, Regional, and Local Services of the Tax Directorate General that currently handle them.

Another important objective to be implemented is the **virtualization of processes and communications**, namely the electronic document and the electronic document and notification, as well as the internal processes of the Administration by accepting recently approved legal provisions.

The Portuguese Tax Administration has learned about a constant growth in electronic interactions with taxpayers and in the use of the Internet as a privileged relational interface with taxpayers. At present, approximately 75% of individual taxpayers hand their tax returns via the Internet, and in the level of Tax on Revenues of Individuals and the VAT, 100% of taxpayers already use electronic means.

The objective of the Plan for Taxpayer Service Quality is to lure taxpayers who traditionally do not use the Internet to use it. This is why a new, more intuitive and friendly site is being implemented.

The availability of services via the *Internet* will allow the following:

- Compliance with all tax obligations;
- Reception and permanent consultation of the communications addressed to the Tax Administration, with support in paper or electronically;
- The submission of all types of requirements and requests;

- The virtualization of information communications from and for taxpayers;
- The progressive availability of systems that will be operated in a *self-service* manner on the part of taxpayers;
- The availability of an electronic mailbox for consultation of messages issued by the Tax Administration;
- The availability of a FAQ (*Frequently Asked Questions*) service to be used by taxpayers and based on a knowledge database in order to support finance services rendered by a call center (and electronic replies) and to allow taxpayers to have electronic access to information in order to answer most of their doubts on fiscal legislation without the need to make a petition from fiscal administration services;
- Support program on legislative interpretation matters, namely *e-learning* programs that taxpayers may access, many of which will be specifically addressed to them;
- In addition to all legal information, the site will feature relevant legal, doctrinaire, and juridical information and all binding information.

In this regard, **electronic kiosks** will be available with support from Tax Administration officials.

Currently a large number of very expressive corrective interventions, inspection procedures, gratuitous demands, hierarchical resources, coercive collection of debts and application of fines have their origin in taxpayers' deficient knowledge about their tax obligations or their *modus faciendi*.

Ignorance or the bad interpretation of the law does not justify the lack of compliance, nor do they exempt people from the established sanctions (Article 6 of the Civil Code).

Nevertheless, **tax administration's collaboration with taxpayers** includes *public, regular, and systematic information on their rights and obligations*, as well as the *regular clarification of doubts on the interpretation and application of tax regulations* (Article 59, paragraph No. 3, lines a) and f) of the General Tax Law).

The Tax Administration has bet on a substantial improvement in the quality and procedural efficiency in the answer to petitions made by taxpayers (such as gratuitous demands, obliging revisions, hierarchical resources, and so on), and it will continue to do so in the future.

The implementation of the Plan for Taxpayer Service Quality will enable the elimination of all pending internal process by the end of next year, so that beginning now, all taxpayer petitions will be answered in a term of one month and never in more than three months.

## 10) CONCLUSION

We began with a renowned Portuguese writer from the 19th century, CAMILO CASTELO BRANCO, and we are going to end with a no less known Portuguese prose writer from the 17th century, FATHER ANTONIO VIEIRA<sup>2</sup>, whose life was spent precisely between the two continents -- Europe and America – and who brilliantly and ahead of time defended the Principle of Tax Equality, leaving behind a precious and always current teaching, which we proceed to cite here:

*“The major yoke of a kingdom, the heaviest burden of a republic are the immoderate taxes. If we want them to be light, share them among all. There is no heavier burden than death, and everybody pays it and no one complains because it is a burden for everyone.”*

Lisbon, February 14th, 1642

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<sup>2</sup> Portuguese writer and speaker from the 17th century (1608-1697).