

Tax Systems and Administrative Courts: A Comparative Analysis of Brazil vs. Czech Republic

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Abstract. Taxation and administrative justice systems play essential roles in shaping the socio-economic world stage, reflecting the complex interplay between legal frameworks, institutional structures, and societal values. This article analyzes tax systems and administrative courts in Brazil and the Czech Republic, exploring divergent approaches to taxation, enforcement, and dispute resolution within contrasting legal and cultural landscapes. Through a critical evaluation of Brazil's federative tax model, the analysis reveals the tensions between regional autonomy and centralized regulation, underscoring challenges in tax enforcement and dispute resolution. Even before the Federal Fiscal Administrative Court (Fisco), which was created to offer potential solutions, the reliance on judicial intervention points to the need for enhanced administrative capacity and alternative dispute resolution mechanisms, due to the slowness and inefficiency demonstrated by this system, since, in most cases, the tax credit is not satisfied, and the State spends a lot more money than it collects. Conversely, exploring the Czech Republic's tax system, unveils a cohesive approach to tax collection and enforcement, bolstered by procedural clarity and judicial oversight through the structure of tax administration institutions, ranging from Tax Offices to the Czech Supreme Administrative Court, which work together to inspect tax matters and review tax procedures to create an efficient and effective system of tax collection.

Keywords. International Comparison of Tax Systems; Administrative Courts; Tax Administration.

1. Introduction

Taxation, often described as the lifeblood of a nation's economy, is a cornerstone of governance, shaping the social contract between citizens and the state. The intricate web of laws, regulations, and administrative practices that underpin tax systems reflects not only the fiscal priorities of a government but also its commitment to equity, efficiency, and accountability.

In this context, comparative analysis emerges as a powerful tool for understanding the divergent approaches to taxation and administrative justice across different legal and cultural landscapes.

The necessity of always improving taxation involves how countries deal with taxes administratively, aiming at greater time and cost savings of Public Administration.

Today, in Brazil, tax executions represent 30% of the acquiescence in the Federal Court¹, which is an alarming number considering the congestion caused in the judiciary and the low resolution rate, since goods or values are not always found for attachment and extinction of tax executions.

In this regard, the purpose of this study is to evaluate the advantages of a centralized system of tax administration, such as the one existing in the Czech Republic, given the due proportions of the extension of both countries.

1.1 Tax System and Administration in Brazil

The broad perspective of Brazil's economy is characterized by regional disparities, necessitating a significant role for the State as a redistributive agent. This role is undeniably a determinant key in shaping the tax model. In Brazil, the main directives

for taxation are provided by the Federal Constitution², which establishes the general principles of taxation, the limitations on the power to tax, tax competence across levels of government as well as tax revenue sharing provisions. Thus, the National Tax System is instituted by the Constitution itself, which establishes that the Union, the States, the Federal District, and the Municipalities may collect taxes. The administrative-political autonomy, an essential characteristic of this federative system, confers to each level of government the possibility of instituting taxes, fees (due to its police power or to the use of public services), and improvement charges (due to public works). Concerning social contributions, most of them may only be established by the Federal Government.²

1.2 Tax competence of taxing powers

To understand the Brazilian tax administration, it's important to establish the competence of tributes, that the Union, States and the Federal District, and Municipalities distribute. The Union is responsible for taxes on foreign trade, on imports (II) and exports (IE) of goods and services; on income and earnings (IR); on industrialized products (IPI); on financial operations (IOF), and rural land property (ITR). The States and the Federal District, on the other hand, are responsible for taxing inheritance and gifts (ITCMD); the circulation of goods and transportation, communication services (ICMS), and motor vehicles (IPVA). Finally, the Municipalities are competent to tax urban land property (IPTU); real estate conveyance (ITBI), and services (ISS).³

1.3 Tax credit

The tax credit is the right of the Public Treasury to demand from the subject liability to fulfill the main tax obligation. It consists of formalizing the tax legal relationship, and the right of the Tax Authorities arising from a main tax obligation, to receive the value of the tax and/or tax penalty.

1.4 Tax release

From the existence of a generating fact, fact, or act that is occurring in the concrete world, the release must occur, which is something that needs to externalize, authorize, and legitimize the Tax Authorities to carry out tax collection. In practice, the launch is a set of acts that aims to verify the existence of the tax credit to be claimed. The Brazilian National Tax Code (CTN)⁴, in article 142, previews that is an exclusive responsibility of the administrative authority to constitute tax credits for the assessment, thus understanding the administrative procedure aimed at verifying the occurrence of the event giving rise to the corresponding obligation, determining the taxable amount, calculating the amount of tax due, identifying the taxable person and, if applicable, proposing the application of the appropriate penalty.

Given this, we have three types of launch, depending on the taxes owed:

- a) Direct release (art. 149 of the CTN): is carried out directly by the Administration without the participation of the taxpayer of the main tax obligation, as occurs in the improvement contribution and public lighting, IPTU, IPVA, and fees;
- b) Release by arbitration (art. 147 of the CTN): is carried out by the Administration based on the subject's declaration passive or third party. Based on the taxpayer's information/declaration, the tax authorities calculate the tax due. For example: the Tax Authorities only take notice of the occurrence of the triggering event if informed by the taxpayer, occurs in the import and export taxes, ITBI, ITD;
- c) Entry by self-assessment: the taxpayer collects the tax without it being released by the Administration (art. 150 of the CTN), as occurs with IR and ITR (art. 10 of Law 9,393/96). In this modality, the taxpayer calculates the amount due and carries out the payment within the established period, with the active subject (Tax) only being responsible for checking the calculation and payment carried out, and then carrying out the approval (express or tacit). Other examples: ICMS, IPI, ISS, COFINS, PIS, CSL, Social Security, and IOF.

2. Federal Fiscal Administrative Court - Fisco

The main objective of the Federal Fiscal Administrative Court, called Fisco, is the production, by the Public Administration, of more solid administrative acts, due to their contradiction, probably more just and surely more effective. The Administered Party may exercise the defense of its claims without being necessary to appeal to the Judiciary, obtaining the satisfaction of their rights in a simpler, faster, and less expensive way.

But, as we observe the reality, the fact is that, mostly, the tax disputes aren't solved at an administrative level, which leads the State to charge in a judicial way, which has much more costs and less effectiveness.

In this context, the tax administrative process is made up of two distinct moments:

- 1) Procedurally: procedures carried out by the power supervisory authority of the administrative authority to verify the correct compliance with tax duties by the taxpayer (taxpayer or responsible), when examining accounting records, payments, withholding taxes, etc.
- 2) Of a procedural nature: the taxpayer who is unhappy with the launch makes an objection, formalizing the conflict of

interests, at which point a true process, imposing the application of the principles of due legal process.

3. Tax System and Administration in Czech Republic

3.1 General overview

The Czech Republic is a relatively small country, since 2004, it has been a member of the European Union. Tax policy is influenced by European harmonization, especially concerning indirect taxes. Income inequality in the Czech Republic is relatively low. In the Czech Republic, regulation of taxation starts with constitutional law: The Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic (Constitutional act No. 2/1993 Coll.) states in paragraph 5 of article 11, that "Taxes and fees shall be levied only based on law." Based on that, taxes are imposed by legal acts that have to go over standard legislative procedures (three "readings" in the Chamber of Deputies, approval in the Senate, and signature by the President). All the taxes are imposed by the State (although tax revenues are shared with lower levels of administration for some taxes). Apart from taxes, there are fees imposed by the local authorities. There is also a system of social security contributions that is obligatory for all employees and self-employed people. Social security contributions are paid to the state budget, and social security benefits are distributed from it as well. The amount of social security contributions exceeds revenues from most taxes.

The existing Czech tax system was introduced in 1993 (after the "Velvet Revolution" in November 1989, when the Czech Republic re-established the market economy). Most direct tax acts are from this era (although they were amended many times since then - the Income Tax Act was amended more than 140 times since 1992), for indirect taxes, new acts were approved in connection with the Czech Republic entering the EU before 2004.

3.2 Tax system

The Czech tax system includes:

Direct taxes:

- a) Income Taxes (Act No. 586/1992 Coll. as subsequently amended) – income tax is dealt with in one comprehensive act, includes all different kinds of income, e. g. personal income tax (natural persons), corporate income tax (legal entities), payroll tax, capital gains tax, withholding tax
- b) Real Estate Tax (Act No. 338/1992 Coll. as subsequently amended) – levied on land and constructions, charged annually based on the value of the real estate as computed by the special valuation rules (depending on the use of the real estate, the area, etc.)

- c) Road Tax (Act No. 16/1993 Coll. as subsequently amended) – use of roads and motorways for business activities.
- d) Gambling Tax (Act No. 187/2016 Coll.)

As direct taxes are connected with free movement of capital, fighting money laundering, and tax avoidance, there is a part of EU legislation national tax act has to comply with.

Indirect taxes:

- a) Value-added Tax (Act No. 234/2004 Coll. as subsequently amended)
- b) Excise Tax (Act No. 353/2003 Coll. as subsequently amended) - levied on hydrocarbon fuels and lubricants, alcoholic beverages (spirits, beer, wine), and tobacco products
- c) Ecological Taxes (gas, solid fuels, electricity – Act No. 261/2007 Sb. on the stabilization of the public finances)

Indirect taxes (VAT, excise taxes) are harmonized on EU level (articles 110-113 of the Treaty of the Functioning the European Union, EU directives on individual taxes).

3.3 Tax administration

For tax administration, the Tax Procedural Code (Act No. 280/2009 Coll., as amended) is the most important legal act. Taxes are administered by financial administration bodies. They consist of Tax Offices located in individual regions of the Czech Republic (with local branches when necessary), a Specialized Tax Office (for subjects designated by law - typically banks, insurance companies, and big corporations), and the Appellate Financial Directorate as a superior authority. Some indirect taxes are administered by a system of Custom Offices (the EU is a customs union, so the existing system of custom offices was given a new role).

A taxpayer typically registers with the appropriate Tax Office, and then fills in and submits a tax return and pays the tax when it is due. The Tax Office checks the return and is entitled to do further examination. If there are doubts about the correctness of the tax return, reproach proceedings start. The tax administrator can exercise a tax control or local tax examination. It can also impose interest on late payment, penalties, or fines for not complying with the obligations (late submission of the tax return, incorrect data, etc.). Within the tax administration structure, remedial instruments, such as appeals and remonstrances, are used. If there are new important facts or proofs, the tax proceedings can be reopened. The decision can be changed or abolished in review proceedings.

3.4 Court procedures

For the judicial review of tax (and other administrative) matters, special senates of regional courts are responsible as courts of the first instance

(the Czech court system starts on the district level, but only civil cases are treated by district courts). Regional courts also deal with criminal cases (that might include tax issues as well) as courts as the first instance. The main legal act in this area is the Code of Administrative Justice (Act No. 150/2002 Coll., as amended), or the Criminal Code (Act No. 40/2009 Coll., as amended).

As the court of appeal for tax decisions, the Supreme Administrative Court serves. It is a relatively new institution in the Czech Republic (it has been operating since 2003).

If fundamental rights and freedoms granted by the Constitution of the Czech Republic are violated by tax procedures, a constitutional complaint to the Constitutional Court can be filed (in the field of taxes, it is a rather rare situation). Decisions of the Constitutional Court are final and cannot be overruled.

4. The Supreme Administrative Court of the Czech Republic

The Supreme Administrative Court is located in Brno. Its responsibilities include procedures dealing with actions against the decisions of administrative authorities, protection against failure of administrative authorities to act and protection from unlawful interference, instruction and coercion from administrative authorities, including tax matters. It works in three, six, seven, and nine-member chambers.

In the Czech Republic, there is a one-instance system of judicial review, i.e. regional courts acting as courts of the first and last instance with no appeal or other *ordinary* judicial remedy being permissible. There are, however, *extraordinary* remedies, the cassation complaint or the reopening of proceedings, before the Supreme Administrative Court.

Most cases involving taxes are solved on lower levels (financial offices, regional courts). The Supreme Administrative Court thus solves the most complicated and problematic cases. Its founding contributed considerably to unification of interpretation rules in tax matters. Before 2003, there were many cases of different treatment of similar cases by different regional authorities.

5. Conclusion

In the complex landscape of taxation and administrative justice, the comparative analysis between Brazil and the Czech Republic illuminates divergent paths, revealing both strengths and weaknesses in each system. As we navigate through the intricacies of tax administration and judicial processes, it becomes evident that the pursuit of efficiency, equity, and accountability remains a shared goal, albeit approached through distinct legal frameworks and institutional arrangements.

The examination of Brazil's federative tax model underscores the intricate interplay between regional autonomy and centralized regulation, reflecting the country's diverse economic landscape and historical context. While the constitutional delineation of tax competencies among different levels of government seeks to balance fiscal sovereignty with administrative efficiency, the reality of tax executions congesting the judicial system highlights systemic challenges in enforcement and dispute resolution. The role of the Federal Fiscal Administrative Court (Fisco) emerges as a potential remedy, promising streamlined adjudication and cost-effective resolution of tax disputes. However, the prevailing reliance on judicial intervention suggests the need for enhanced administrative capacity and alternative dispute resolution mechanisms to alleviate the burden on the judiciary and expedite tax enforcement.

Conversely, the Czech Republic's centralized tax administration model embodies a more uniform and cohesive approach to tax collection and enforcement. Rooted in constitutional principles and harmonized with EU regulations, the Czech tax system prioritizes procedural clarity and judicial oversight, exemplified by the role of the Supreme Administrative Court in ensuring legal consistency and safeguarding fundamental rights. Yet, despite the advancements in administrative efficiency and judicial review, the persistence of complex tax procedures and limited access to legal remedies underscores the imperative for continued reform and innovation in tax administration.

In conclusion, the comparative analysis reveals both the promise and the pitfalls inherent in taxation and administrative justice systems. While Brazil's federative model grapples with the challenge of reconciling regional autonomy with administrative effectiveness, the Czech Republic's centralized approach confronts issues of procedural complexity and access to justice. Nevertheless, both systems offer valuable insights into the evolving landscape of tax governance, highlighting the imperative for ongoing dialogue, collaboration, and reform to foster transparency, fairness, and accountability in taxation. As nations strive to optimize their tax regimes, the lessons drawn from comparative analysis serve as guideposts for building more equitable and efficient systems that uphold the principles of justice and prosperity for all.

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