Available online at http://www.journalijdr.com

IJDR

ISSN: 2230-9926

International Journal of Development Research
Vol. 10, Issue, 11, pp. 41930-41935, November, 2020
https://doi.org/10.37118/ijdr.20365.11.2020

RESEARCH ARTICLE **OPEN ACCESS**

TAX GOVERNANCE, TECHNOLOGY, COMPLIANCE AND RISKS: A CASE STUDY IN THE ENERGY SECTOR

***Hélder Uzêda Castro, PhD**

PPGA and PPDRU, Salvador University (UNIFACS); CICS.NOVA, New University of Lisbon

ARTICLE INFO

Article History:
Received 20th August, 2020
Received in revised form
18th September, 2020
Accepted 21st October, 2020
Published online 24th November, 2020

Key Words:
Corporate Governance,
Tax Governance, Compliance,
Risks, Energy.

****Corresponding author:***
Hélder Uzêda Castro, PhD

ABSTRACT

The objective of this research is to analyze the modernization of tax administration, based on the model of tax governance, recently discussed in the environment of large economic groups and implemented, in the period 2010-2015, in the financial operations center, in the shared service, of a company which is part of the group of the largest contributors in the country, in the energy segment. We opted for the case study and content analysis, with a collection that favored documentary research from corporate sources and semi-structured interviews with thirty-two key actors of the company, including description of processes and systems. The researcher used theoretical support from the areas of Corporate Governance, Tax Governance, Compliance and Risk Management. The investigation made it possible to identify the current structure of the tax enforcement process, as well as to show efficiency gains and risk reduction with the referred model.

Citation: ***Fabiano de Abreu Rodrigues,*** "Psychoconstruction - the architecture of the human mind: from memory through the pituitary protected by the sphenoid to the mitochondrial eva*", International Journal of Development Research*, 10, (11), 41930-41935.

INTRODUCTION

Corporate governance (CG) emerged to resolve conflicts of interest between ownership and management circles in organizations, establishing practices that aimed to protect shareholders' rights for personal purposes and abuse by executives, representatives of controllers, predominantly in strategic decisions that dictated business directions. It is based on principles and pillars defended by the financial market and several institutions to guide practices. Its adoption contributes to sustainable economic development, which provides improvements in the performance of companies and accelerates results, in addition to facilitating access to external sources of funds. In the Brazilian reality, theoretical discussions on CG have advanced widely since the 1990s. The evolution of the theme is noticeable and important, as it contributes to the consolidation of essential concepts for the management of business organizations.

On the other hand, from the point of view of the effectiveness of execution, governance has advanced with relative timidity in relation to its formal aspect. For the purpose of this research, tax governance (TG) becomes relevant, which is thought through CG structures and practices, associated with process management and tax management, with a fundamental emphasis on the use of information technology, mainly in support. compliance programs.In addition, in the face of a complex and controversial Brazilian Tax System (BTS), the adoption of TG models, supported in the areas of compliance and risk management, is essential to avoid the penalties inherent to tax processes, more visibly materialized by inspections. The structures, models and processes of TG, based on the connection between the tax and information technology areas, namely through the computerization of the execution processes and tax audits, can represent greater efficiency and effectiveness in the management, modernization of its tax operations, as well as the risk mitigation and the possibility of managers' accountability, especially after the advent of the so-called Public Digital Bookkeeping System - standardization and computerization of all tax obligations.

The proposed study was carried out from the analysis of the tax governance model, implemented in the period 2010-2015, at the Shared Services Center (SSC), located in Salvador, Brazil, of a company that is part of the group of the largest contributors in Brazil , of the energy segment, one of the most representative in relation to the payment of taxes in the country and which has operations subject to any tax facts described for in the legislation, which demands enormous organizational effort from its components and investments in support systems for execution processes, in order to guarantee the correct exercise of tax obligations..

MATERIALS AND METHODS

It is known that formal mechanisms of effective corporate governance already exist and are highly recommended by several institutions and adopted by the largest global economic conglomerates.The advancement of market economies and the latest global crises contributed to the discussion on governance, given the need to create mechanisms that would ensure that management decisions were made in the best interest of investors, thus increasing the probability of return on investment and reducing corporate risks. The Brazilian Institute of Corporate Governance defines CG as a system by which organizations are directed, monitored and encouraged, with practices and relationships between owners, board of directors, management and control bodies. Good corporate governance practices convert principles into objective recommendations, aligning interests with the purpose of preserving and optimizing the organization's value, facilitating its access to capital and contributing to its longevity (IBGC, 2020). Silveira (2015) states that CG is related to the way companies are managed and controlled, including their explicit and tacit rules, with emphasis on the relationship between their main protagonists, considering here the board, the board of directors and the shareholders. It is a theme that requires a multidisciplinary approach, covering areas such as business ethics, management, leadership, social psychology, law, economics, finance and accounting, among others.

In Brazil, in view of the discussion, it becomes essential to design models of tax governance adopted, mainly by large economic agents, being structured based on the management of processes and taxes, with intensive use of technology for the application of compliance programs. and risk mitigation. Taxation in Brazil is difficult, as its constant changes or updates lead to the constant improvement of the control and inspection systems by the tax authorities, which reinforces the business need to structure its operations under adequate tax governance.It is not too much to remember that it is the duty of the company's top management to plan its business, with a view to increasing its revenues and reducing its costs, including those of a tax nature. It is not for any other reason that TG is particularly relevant for organizations. With regard to the area of Tax Governance, Castro (2013) highlights business work in the sense of activities that require a high degree of alignment of legal understandings, as well as compliance with enforcement processes that meet the regulated and imposed tax demands. government entities. Given the strategic importance of concentrating the coordination of all resources in this area, respecting a governance model of the company and comprising well-defined processes.The organization of the components through a TG structure, provides effective fulfillment of tax obligations, enhancing the legitimate tax economy and mitigating the risk of eventual questions from the public authorities, which, ultimately, may result in the assumption of tax contingencies or managers' responsibility for their acts or omissions in this area. For Lopes (2011, p.26), considering the benefits that tax governance can bring, then there is a vast field in search of the awareness of Brazilian businessmen for its implantation in all types of society, being this, something not very difficult to materialize, as we have one of the most complex tax systems in the world, in addition to a high tax burden, therefore, tax governance becomes essential to reduce this burden, as well as fiscal risks. In Brazilian economic activity, mainly after the implementation of the gorverno taxation system, the use of technology - and the consequent interaction between the tax and information technology areas - started to play a distinct role in fulfilling the accessory obligations and the TG structure of the companies. entities. The initial perspective was that there would be a reduction in costs for companies, due to agility, a reduction in the number of accessory obligations and even a reduction in paper, given the use of the internet to transmit information.

However, this did not reflect, in practice, cost reduction, mainly due to the volume of tax obligations (related information and payment of taxes) and investments made in the implementation and maintenance of Integrated Management Systems, in addition to other solutions in the area of information technology, necessary for the generation, validation and transmission of the electronic files required, regularly, by the tax authorities. In tax matters, the implementation of TG policies and internal control programs (compliance management) can help prevent, mitigate and monitor corporate and institutional risks (related to the companies' reputation). Silva Júnior (2015) highlights that, for example, the last 25 years, counted since the promulgation of the Federal Constitution, more than 300 thousand tax rules were published, including laws, decrees, provisional measures, constitutional amendments and others, emphasizing that. Internal control, as an integral part of corporate risk management, "is important in the activity of organizations because it contributes to the safeguarding of their assets, the development of their business and consequently the result of their operations, adding value to the entity". (MIGLIAVACCA. 2002, p.20). Today, identifying what is the responsibility of the executive director alone and what is the responsibility of the company alone is not a simple task. Administrators can be legally charged with the most diverse “responsibilities”, be they environmental, labor, tax, etc. Therefore, business organizations need to adopt rules and processes that, in a clear or normal way, are explicit in their codes of ethics, conduct, etc. ., as well as other internal documents that support the alignment of interests between ownership and management. In this context, it is important to define the concept of risk. According to the IBGC (2007, p.11), it comes from the word risicu or riscu, in Latin, which means daring, in English. "Risk" is usually understood as the possibility of "something not going right", but its current concept involves the quantification and qualification of uncertainty, both in terms of "losses" and "gains", in relation to the course of events planned, whether by individuals or organizations. In other words, 'risk' is the possibility related to the probability of obtaining unexpected results, involving the chance of reaching a different scenario than expected, positive or negative, through individuals or organizations. According to Elias da Silva Júnior (2015, p.492) “the concept, or risk management, [...] has two fundamental functions which are:

the identification of risks that may compromise the achievement of the defined objectives and the assessment of impacts in the result ". In this way, corporate risk management allows identifying, evaluating and managing risks in the face of uncertainties, as well as integrating the process of value creation and perpetuation of organizations and must be applied in the establishment of strategies, disseminated throughout the organization, that enable the identification of potential events, capable of affecting them, allowing the management of threats according to the organization's own risk appetite. It is worth mentioning that the responses offered to the risks are concentrated on the following actions by the managers: (i) avoiding, discontinuing the activities that generate the risks; (ii) reduce, adopting measures to reduce the probability and / or the impact of risks; (iii) sharing, reducing the likelihood or impact of risks, transferring or sharing part of the risk; and, (iv) accept, when measures are not taken that affect the probability or the degree of impact of the risks. (COSO, 2013). Therefore, the processes involved in compliance efforts need to be mapped, modeled, implemented (and even computerized) and monitored according to the importance and the risks that their eventual non-conformities or non-conformities can bring to the business.

Considering the specificity of the proposed study object, the case study was chosen. The object of study was the analysis of the tax governance model, implemented in the period 2010-2015, in the center of financial operations, of a company that is part of the group of the largest taxpayers in the country, in the energy segment. For the preparation of this article, documentary research was used, based on data collection in publications and internal reports of the researched company and of consulting and advisory companies on the subject, such as: strategic plans, executive projects and processes. and management models adopted by that organization. The information gathered in the company's benchmarking processes (common practice among tax teams of large companies) was also used by other large companies, which were accessed through records of reports, presentations, tables, notes, surveys, maps and processes. of the Integrated Management System, Tax Support System, Electronic Tax Audit System and Tax Governance System by that company. The documentary and bibliographic research collected data pertinent to the subject in books, dictionaries, specialized magazines or not, newspapers, theses, dissertations and publications of the company itself.

The data collection was carried out through semi-structured interviews with key people for the qualitative survey of the essential information for understanding the model of tax governance, namely: the executive manager of the Tax Administration, responsible for the process of structuring the tax administration, started in 1999 and expanded in 2015; the Tax area manager, who participated in the activities of structuring the company's tax administration; the tax area manager; two tax managers, a tax manager and a group of twenty-seven professionals, including analysts and accountants, from the Tax, Accounting and Tax areas of the company studied and other large companies, who visited the shared services center and participated in presentations on the organizational structure of the Tax area, the corporate and tax governance of the company, as well as on the tax enforcement process. The treatment of the data was carried out through the content analysis of Bardin (2007), being "horizontal analysis", contemplating the records of all the interviewees and identifying the similarity between opinions and positions, through words, expressions and central ideas that will contribute to the understanding of the content of the interviews; "vertical analysis" of each interview (semi-structured items), indexing the material from the groups of ideas per interviewee, as well as identifying the main arguments; and, finally, "diagonal analysis", seeking to identify ideas, information and positions that will naturally arise during the interviews and that will go through the hypotheses of this study, but that were not planned or referenced in the data collection instrument.

RESULTS

This article discussed the corporate governance model adopted by the researched company, with an emphasis on the organizational restructuring process, mainly in the formatting of operations in shared services, it became an important basis for the modernization of tax administration, making the contribution of this one difficult to disassociate. in structuring the tax activity of large companies, with a high degree of complexity in their operations and in fulfilling their tax obligations. It was possible to perceive that the application of good CG practices, with emphasis here on corporate responsibility, notably based on a TG model, provides the reduction or mitigation of fiscal risks. In the present case, the restructuring of the financial area of the analyzed company, which started to be organized in specific executive managements (with emphasis on the Tax Executive Board), provided for the company in question, ultimately, the alignment of interpretations and decisions on tax issues in Brazil and abroad. Documents show that the tax enforcement process is now integrated with other business operations, through the alignment of information on taxable facts and their financial and organizational impacts in the most diverse areas of the company. The operations center was the environment conducive to the emergence of compliance programs - based on risk management and conducted within safe standards for the company, its employees, its shareholders and investors, as well as for other stakeholders.Records of the high frequency of changes in tax legislation, with repercussions on centralizing tax enforcement processes, even non-transactional ones, indicate that they were standardized for greater control and better performance of the company's tax activity.

Interviews suggested that information technology was an important basis for the implementation and operation of best practices. In this sense, the use of technological tools (management and review systems; analysis, correction and proposition of improvements in tax processes) was fundamental to the model of tax governance adopted by the studied company.In addition, the Compliance Project, implemented in the 2010-2015 period, by the company, sought to integrate a diversified technological base, which provides an efficient set of mechanisms capable of monitoring and mitigating the company's fiscal risks, allowing the identification and measurement of risks and a significant reduction in the company's fiscal exposure. With the adoption of this model, there was an improvement in the quality of the information sent regularly to the Tax Authorities. The research made it possible to identify the current structure of the tax enforcement process and verify whether the investment made in its implementation, the model and processes involved, as well as the TG system, was recovered by reducing errors or divergences in the transmitted files and, consequently , of tax penalties, which was confirmed by the interviewed professionals. It was also observed that, with the CSC, the company's processes became more agile, allowing interventions or corrections of the tax files before transmission to the tax authorities and a considerable reduction in the payment of penalties applied based on jurisprudence arising from decisions and positions company's own legal requirements. It is noteworthy that this research did not intend to exhaust the subject, it only sought to provide a better understanding of the theme by presenting, from a practical point of view, the empirical application of TG mechanisms, based on the concepts of CG, and their natural correlation with management risk management and compliance systems. It is believed that the study carried out contributes to the social sciences, specifically for the areas of accounting and finance, and for the discussion and systematization of tax governance practices, which enable the mitigation of tax risks and the reduction of tax exposure of organizations.

DISCUSSION

The deregulation of the energy sector and the opening of capital in the international market, the company considered in its strategic plan 2000-2020 the commitment to provide correct and accurate information to its investors - institutional or individual, including shareholders -, mainly about the production, reserves, investments, costs, sales prices and taxes, seeking constant dialogue and the consequent credibility with this public, an essential condition for the success of stock negotiations. At the time, the tax issue entered the priority agenda of several executive meetings. The most immediate result was the restructuring of the Financial area, which started to be shared and organized in specific executive managements, highlighting, for the purpose of this research, the Tax Executive Management, installed in the center of financial operations.This “new” structure became responsible for all the company's tax processes, maintaining a constant relationship with tax entities in Brazil: federal, state and municipal; in addition to working to ensure the alignment of tax decisions, in Brazil and abroad. This alignment was provided for in the tax governance guidelines adopted by the company.The corporate and tax governance models depend on robust technological platforms for the implementation and operation of tax practices. (Castro, 2013), In the studied organization, the Tax Executive Management instituted the Systemic Tax Solutions Management, responsible for the use of the technological resources necessary to execute the tax process with better compliance and internal controls. This was further subdivided to meet federal, state and municipal demands.

The State Tax Management - sectorial division in Brazil - was also subdivided into Sectorial Managements called Entries, Exits and Obligations, being a pioneer in the use of a Tax Governance System, developed and implemented to meet the demands of validations, audits, indicators, “controls SOX ”, inspired by the Sarbanes-Oxley Act and other processes that support the company's TG model. The organization has the support of several systemic resources in its structure, which support and automate its tax enforcement processes. The most important are:

- SAP System - Integrated Business Management System, responsible for the integration of all data and processes in the areas of finance, accounting, human resources, manufacturing, marketing, sales, purchasing, ... production and distribution, also counting on a module automation of import, export and exchange processes. However, it does not have resources prepared to meet the demands of bookkeeping, calculation and auditing in the Tax Administration area, considering the Brazilian tax reality, in which there are dozens of obligations, including taxes, fees and contributions. To meet these demands, resources were put in place for a tax support solution and the Electronic Tax Audit and Tax Governance Systems. In 2011, the Tax Governance System, certified by SAP Brazil, was integrated into the SAP System, through the innovation laboratory known as “COIL - Co-innovation Laboratory”;
- Tax Support System - Calculation System for Direct and Indirect Taxes (of the operation), which contemplates the company's tax obligations, obeying the state laws (Tax on Operations related to the Circulation of Goods and Provision of Interstate and Intermunicipal Transport Services and Communication), federal (Tax on Industrialized Products, Income Tax Withheld at Source and National Institute of Social Security) and municipal (Tax on Services). This system is also responsible for generating digital files to meet the company's obligations;Electronic
- Tax Audit System, responsible for supporting the process called “Automatic Calculation Analysis”, with which the calculators and analysts of the Sectorial Management of Entries, Exits and Obligations gradually check, over the month, the bookkeeping of the invoices of entry and exit until meeting the deadlines established by the tax authorities for the fulfillment of accessory and principal obligations. For that, it was necessary to build the tax scenario for platform customization, gathering all the information regarding the Special Regimes, Tax Benefits and Interpretations of the company's Legal Department, in addition to the volume of these for the full functioning of the referred process. Today, it is operated by the teams of the Sectorial Departments, Registries and Obligations, with the consultative support of specialists for the interpretation and use of analysis reports. It works with four levels of validation and analysis of files generated by the SAP System and the Tax Support System: technical validation; internal integrity validation; external integrity validation; and tax validation;
- Tax Governance System provides audit resources and governance mechanisms for the company's Tax Administration area, mainly for the General Directorate of Tax Enforcement. This system provides several reports that demonstrate the reality of the company's operations. It uses as a base the information presented to the tax authorities through the archives of all digital bookkeeping..

Compliance Project, implemented in the period 2015-2020. This project sought to integrate a multiple technological base, since it was implemented with the support of four basic systems (described above) and some legacies or complementary supports (not described in this research), the entire tax enforcement process, with the aim of modernizing or computerize the activities of calculation and generation of ancillary obligations, in a joint effort to mitigate risks or reduce the fiscal exposure of the researched company. For a better understanding of the process, the tax information management system or legacies are migrated to the tax support system, a resource responsible for generating the so-called 'tax books' and accessory obligations periodically required by the government. The import of these books and other information from the tax governance system allows the analysis of validation and reconciliation of the records of the company's operations, already considering the consultation of tax specialists. This systemic resource replicates and simulates inspection routines commonly adopted by the tax authorities. With this, the company can view any errors or divergences and act preventively in the final submission of the requested information. This feature allows to mitigate risks and significantly reduce the company's fiscal exposure.

The reports generated by the tax governance system are used for technological adjustments in the systems of origin - management system, tax support or legacy. At this stage, all decisions are made by the company, based on the analysis and risk measurement of a mixed team (company and external experts). Here, given the mapping of risks, analysts and executives can decide to avoid them, reduce them, share them or simply accept them (COSO, 2013). Interviews pointed out that this model of tax governance is supported and monitored by the unit responsible for corporate risks. Corroborating with English and Hammond (2015), if any company wants to prosper and survive in the medium and long term, then consistent investments in the areas of risk, compliance and control need to be made. Although it is expensive to build a qualified and high quality compliance area, it will be one of the best investments to mitigate corporate risks. According to the managers of the areas surveyed, with the adoption of this model, there was an improvement in the quality of the information in the files regularly passed on to the tax authorities. Also according to the Tax Execution area manager, the investment made in the implementation of the structure, model and processes, as well as the tax governance system, was largely recovered through the reduction of penalties, and this indicator is periodically monitored by the company executive officer.

The content analysis identified that other systemic resources are developed internally, with the support of the company's IT, and used by researchers and analysts of the Sectoral Management of Inputs, Outputs and Obligations, as spreadsheets and macros of common systems of the Brazilian software market. These seek to quickly meet specific demands, not yet met by the main software. In this case, internal controls are processes that consist of continuous tasks and activities, carried out by the company's professionals, going beyond the simple establishment of manuals of policies and procedures, systems and forms. A vertical analysis suggested that the shared services model seeks to consolidate the transactional activities, or those that are repeated, of the business units in a central structure, aiming at cost reduction due to the elimination of duplication of functions, the standardization of processes and gains in scale. The content analysis showed that tax activities do not necessarily have transactional characteristics and the centralized model was adopted by the company with the main objective of concentrating teams, processes and decisions in a single physical structure.
According to the tax enforcement manager, with the operations center, the processes became more agile, which allowed for quick intervention or correction in the tax files. Schulman et al (apud BERDEJO, 2009) define shared services as the concentration of company resources acting with activities, previously spread throughout the organization, in order to serve multiple internal partners, with low cost and high level of services, with the common objective of serving external customers and adding value to the company. In the case discussed, the analyzes indicate that the tax activity of the company was dispersed in processes adopted and managed by several Regional Units (RU) - installed in states such as: São Paulo, Rio de Janeiro, Espírito Santo, Bahia, Rio Grande do Norte, among others - and were structured or implemented according to the tax demands of each of these regions. The organization's so-called 'modernization of tax administration' was motivated, since 1995, by the creation of the Integrated Information System on Interstate Operations with Goods and Services, by the Public Digital Bookkeeping System and by the increased tax burden on oil.

The processes adopted by these RUs aimed at meeting the demands imposed by the tax authorities through the fulfillment of accessory and principal obligations. However, when conducting the research, it is understood that there was a misalignment between the understanding of the company's performance and the current legislation, which was directly related to the taxable event, causing a distortion between small "gains" that generated jurisprudence for large "losses" , not recorded or measured in this research. According to the managers of the areas surveyed, there was a considerable reduction in the payment of penalties applied based on jurisprudence arising from the company's own legal-tax decisions or positions. Another important aspect highlighted in the interviews was the need to integrate tax activity with the company's operation. This was done by aligning information on the taxable event and its financial and organizational impacts in the most diverse areas of the company. Therefore, it is in agreement with Moge et al. (2011, p. 21), insofar as they affirm that “the harmony of management practices and business operation with the management and operationalization of taxes should form a single integrated and harmonious set”. This research found that the tax management and operation model is a subset of business management and operation.

REFERENCES

Bardin, L. 2007. Content Analysis. Translation by Luís Antero Reto. Lisbon: Editions 70.

Berdejo, 2009. Ludwig Miguel Agurt. Resistance factors to the process of implementing a shared service center: an approach according to Institutional Theory.. 184 f. Thesis (Doctorate in Accounting) - Faculty of Economics, Administration and Accounting, São Paulo University, São Paulo.

Castro, Hélder Uzêda. 2013. Factors that contribute to the development of tax governance: a case study on the structuring of Petrobras' tax administration. 2013. 215 f. Dissertation (Master in Administration) - Universidade Salvador, Salvador.

Coso Report, Internal Control - Integrated Framework - Executive Summary, 2013. Available at: http://www.coso.org/documents/990025P_Executive_Summary_final_may20_e.pdf. Accessed on: 11/16/2019

English, Stacey; Hammond, Susannah. Cost of Compliance 2015. Thomson Reuters.

Ibgc. Guidance for corporate risk management; coordination: Eduarda La Rocque. São Paulo, SP: IBGC, 2007 (series of corporate governance notebooks, 3).

Lex Consult. Compliance Project. Rio de Janeiro, 2010. mimeo.

Lopes, Geisa dos S. Tax governance: a case study on the importance and feasibility of implementing its practices in the company Alfa Ltda. 2011. 68f. Course Conclusion Paper (Monograph) - Accounting Sciences Course, Faculty of Applied Sciences, Petrolina, 2011.

Migliavacca, Paulo Roberto. Internal controls in organizations. São Paulo: Edicta, 2002.

Moge, 2011. José Eduardo et al. Tax management in the modern company. São Paulo: Senac.

Silva Júnior, Elias da. Tax governance. 2015. IN: OLIVEIRA, Fábio R. de and GALLO, Mauro F. (Coord.). Accounting and tax management. São Paulo: FISCOSoft Editora, 2015, p. 487-507.

Silveira, Alexandre Di Miceli. Corporate Governance in Brazil and in the World: theory and practice. 2. ed. Rio de Janeiro: Elsevier, 2015.

****